other law) shall be treated as referring to that provision as transferred or to the corresponding provision as so enacted by this subtitle [subtitle C (§§1661–1665) of title XVI of div. A of Pub. L. 103–337].

''(b) SAVINGS PROVISION FOR REGULATIONS.—A regulation, rule, or order in effect under a provision of title 10, United States Code, replaced by a provision of that title enacted by sections 1661 through 1664 shall continue in effect under the corresponding provision so enacted until repealed, amended, or superseded.

''(c) GENERAL SAVINGS PROVISION.—An action taken, or a right that matured, under a provision of title 10, United States Code, replaced by a provision of that title enacted by sections 1661 through 1664 shall be treated as having been taken, or having matured, under the corresponding provision so enacted.''

CROSS REFERENCES

Coast Guard, generally, see Title 14, Coast Guard.

National Guard, generally, see Title 32, National Guard.

Patriotic societies and observances, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Pay and allowances of the uniformed services, see section 101 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

President of the United States—

Commander in Chief, see Const. Art. II, §2, cl. 1.

Delegation of functions, see section 301 et seq., of Title 3, The President.

Veterans' benefits, see section 101 et seq. of Title 38, Veterans' Benefits.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 50 sections 415, 2031.

Subtitle A—General Military Law

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AMENDMENTS

1994—Pub. L. 103–359, title V, §501(b)(2), Oct. 14, 1994, 108 Stat. 3429, substituted ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' for ''Defense Intelligence Agency Civilian Personnel'' in item for chapter 83.

Pub. L. 103–355, title VIII, §8101(b), Oct. 13, 1994, 108 Stat. 3389, added item for chapter 140.

Pub. L. 103–337, div. A, title V, §554(a)(2), Oct. 5, 1994, 108 Stat. 2773, added item for chapter 22.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(1), Nov. 30, 1993, 107 Stat. 1713, struck out item for chapter 135 ''Encouragement of Aviation''.

1992—Pub. L. 102–484, div. A, title XIII, §1322(a)(2), div. D, title XLII, §4271(b)(1), Oct. 23, 1992, 106 Stat. 2553, 2695, added items for chapters 89 and 148 and struck out former items for chapters 148 ''Defense Industrial Base'', 149 ''Manufacturing Technology'', and 150 ''Development of Dual-Use Critical Technologies''.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(ii), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993, struck out item for chapter 85 ''Procurement Management Personnel''.

Pub. L. 102–190, div. A, title VIII, §821(f), title X, §§1002(a)(2), 1061(a)(27)(A), title XI, §1112(b)(2), Dec. 5, 1991, 105 Stat. 1432, 1455, 1474, 1501, substituted ''Defense Budget Matters'' for ''Regular Components'' and inserted ''221'' in item for chapter 9, substituted ''Original Appointments of Regular Officers in Grades Above Warrant Officer Grades'' for ''Appointments in Regular Components'' in item for chapter 33, added item for chapter 33A, substituted ''Manufacturing'' for ''Maufacturing'' in item for chapter 149, added items for chapters 150 and 152, struck out item for former chapter 150 ''Issue to Armed Forces'' and struck out item for former chapter 151 ''Issue of Serviceable Material Other Than to Armed Forces''.

Pub. L. 102–25, title VII, §701(e)(1), (2), Apr. 6, 1991, 105 Stat. 114, added item for chapter 85 and in item for chapter 108 inserted ''2161''.

1990—Pub. L. 101–510, div. A, title II, §247(a)(2)(B), title V, §502(a)(2), title VIII, §823(b)(1), title IX, §911(b)(3), title XII, §1202(b), title XVIII, §1801(a)(2), Nov. 5, 1990, 104 Stat. 1523, 1557, 1602, 1626, 1656, 1757, added item for chapter 58, struck out item for chapter 85 ''Procurement Management Personnel'', added item for chapter 87, substituted ''Department of Defense Schools'' for ''Granting of Advanced Degrees at Department of Defense Schools'' in item for chapter 108, substituted ''Support of Science, Mathematics, and Engineering Education'' for ''National Defense Science and Engineering Graduate Fellowships'' in item for chapter 111, added item for chapter 149 and redesignated former item for chapter 149 as item for chapter 150, and added item for chapter 172.

1989—Pub. L. 101–189, div. A, title VIII, §843(d)(2), title IX, §931(e)(2), title XVI, §1622(d)(2), Nov. 29, 1989, 103 Stat. 1517, 1535, 1605, substituted ''Training and Education'' for ''Training'' in item for part III, added item for chapter 111, and substituted ''Cooperative Agreements'' for ''Acquisition and Cross-Servicing Agreements'' in item for chapter 138.

1988—Pub. L. 100–456, div. A, title III, §§342(a)(2), 344(b)(2), title VIII, §821(b)(2), title XI, §1104(b), Sept. 29, 1988, 102 Stat. 1961, 1962, 2016, 2046, substituted ''Support for'' for ''Cooperation With'' and ''Agencies'' for ''Officials'' in item for chapter 18, substituted ''Defense Industrial Base'' for ''Buy American Requirements'' in item for chapter 148, substituted ''Property Records and Report of Theft or Loss of Certain Property'' for ''Property Records'' in item for chapter 161, and added item for chapter 171.

Pub. L. 100–370, §§1(c)(3), (e)(2), 2(a)(2), 3(a)(2), July 19, 1988, 102 Stat. 841, 845, 854, 855, added items for chapters 54, 134, 146, and 148.

1987—Pub. L. 100–180, div. A, title III, §332(c), title VII, §711(b), Dec. 4, 1987, 101 Stat. 1080, 1111, substituted ''Humanitarian and Other Assistance'' for ''Humanitarian and Civic Assistance Provided in Conjunction With Military Operations'' in item for chapter 20 and ''Financial Assistance Programs'' for ''Scholarship Program'' in item for chapter 105.

Pub. L. 100–26, §§7(c)(1), 9(b)(4), Apr. 21, 1987, 101 Stat. 280, 287, added item for chapter 21, substituted ''Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries'' for ''North Atlantic Treaty

Organization Acquisition and Cross-Servicing Agreements'' in item for chapter 138, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' and ''2430'' for ''2431'' in item for chapter 144, and substituted ''2721'' for ''2701'' in item for chapter 161.

1986—Pub. L. 99–661, div. A, title III, §333(a)(2), title XIII, §1343(a)(22), Nov. 14, 1986, 100 Stat. 3859, 3994, added item for chapter 20 and substituted ''2341'' for ''2321'' in item for chapter 138.

Pub. L. 99–499, title II, §211(a)(2), Oct. 17, 1986, 100 Stat. 1725, added item for chapter 160.

Pub. L. 99–433, title IV, §401(b), title VI, §605, Oct. 1, 1986, 100 Stat. 1030, 1075a, added items for chapters 2, 6, 38, and 144, inserted ''and Functions'' in item for chapter 3, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in item for chapter 4, substituted ''151'' for ''141'' as the section number in the item for chapter 5, reenacted item for chapter 7 without change, and inserted ''and Department of Defense Field Activities'' in item for chapter 8.

Pub. L. 99–399, title VIII, §806(d)(2), Aug. 27, 1986, 100 Stat. 888, added item for chapter 110.

1985—Pub. L. 99–145, title VI, §671(a)(2), title IX, §924(a)(2), Nov. 8, 1985, 99 Stat. 663, 698, added items for chapters 85 and 109.

1984—Pub. L. 98–525, title VII, §705(a)(2), title XII, §1241(a)(2), Oct. 19, 1984, 98 Stat. 2567, 2606, substituted ''Members of the Selected Reserve'' for ''Enlisted Members of the Selected Reserve of the Ready Reserve'' in item for chapter 106 and added item for chapter 142.

1983—Pub. L. 98–94, title IX, §925(a)(2), title XII, §1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted ''or'' for ''and'' in item for chapter 60.

1982—Pub. L. 97–295, §1(50)(D), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 167.

Pub. L. 97–269, title V, §501(b), Sept. 27, 1982, 96 Stat. 1145, added item for chapter 8.

Pub. L. 97–214, §2(b), July 12, 1982, 96 Stat. 169, added item for chapter 169.

1981—Pub. L. 97–89, title VII, §701(a)(2), Dec. 4, 1981, 95 Stat. 1160, added item for chapter 83.

Pub. L. 97–86, title IX, §905(a)(2), Dec. 1, 1981, 95 Stat. 1116, added item for chapter 18.

1980—Pub. L. 96–513, title V, §§501(1), 511(29), (54)(B), (99), Dec. 12, 1980, 94 Stat. 2907, 2922, 2925, 2929, added item for chapter 32, substituted ''531'' for ''541'' as section number in item for chapter 33, substituted ''34'' for ''35'' as chapter number of chapter relating to appointments as reserve officers, added items for chapters 35 and 36, substituted ''Reserve Components: Standards and Procedures for Retention and Promotion'' for ''Retention of Reserves'' in item for chapter 51, added item for chapter 60, substituted ''1251'' for ''1255'' as section number in item for chapter 63, substituted ''Retirement of Warrant Officers'' for ''Retirement'' in item for chapter 65, substituted ''1370'' for ''1371'' as section number in item for chapter 69, amended item for chapter 73 to read: ''Annuities Based on Retired or Retainer Pay'', and capitalized ''Assistance'', ''Persons'', ''Enlisting'', ''Active'', and ''Duty'' in item for chapter 107.

Pub. L. 96–450, title IV, §406(b), Oct. 14, 1980, 94 Stat. 1981, added item for chapter 108.

Pub. L. 96–342, title IX, §901(b), Sept. 8, 1980, 94 Stat. 1114, added item for chapter 107.

Pub. L. 96–323, §2(b), Aug. 4, 1980, 94 Stat. 1019, added item for chapter 138.

1977—Pub. L. 95–79, title IV, §402(b), July 30, 1977, 91 Stat. 330, added item for chapter 106.

1972—Pub. L. 92–426, §2(b), Sept. 21, 1972, 86 Stat. 719, added items for chapters 104 and 105.

Pub. L. 92–425, §2, Sept. 21, 1972, 86 Stat. 711, amended item for chapter 73 by inserting ''; Survivor Benefit Plan'' after ''Pay'' which could not be executed as directed in view of amendment by Pub. L. 87–381. See 1961 Amendment note below.

1968—Pub. L. 90–377, §2, July 5, 1968, 82 Stat. 288, added item for chapter 48.

1967—Pub. L. 90–83, §3(2), Sept. 11, 1967, 81 Stat. 220, struck out item for chapter 80 ''Exemplary Rehabilitation Certificates''.

1966—Pub. L. 89–690, §2, Oct. 15, 1966, 80 Stat. 1017, added item for chapter 80.

1964—Pub. L. 88–647, title I, §101(2), title II, §201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added items for chapters 102 and 103.

1962—Pub. L. 87–651, title II, §203, Sept. 7, 1962, 76 Stat. 519, added item for chapter 4.

Pub. L. 87–649, §3(2), Sept. 7, 1962, 76 Stat. 493, added item for chapter 40.

1961—Pub. L. 87–381, §1(2), Oct. 4, 1961, 75 Stat. 810, substituted ''Retired Serviceman's Family Protection Plan'' for ''Annuities Based on Retired or Retainer Pay'' in item for chapter 73.

1958—Pub. L. 85–861, §§1(21), (26), (33), 33(a)(4)(B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted ''General Service Requirements'' for ''Service Requirements for Reserves'' in item for chapter 37, ''971'' for ''[No present sections]'' in item for chapter 49, ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in item for chapter 55, and struck out ''Care of the Dead'' and substituted ''1475'' for ''1481'' in item for chapter 75.

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AMENDMENTS

1994—Pub. L. 103–337, div. A, title V, §554(a)(2), Oct. 5, 1994, 108 Stat. 2773, added item for chapter 22.

1991—Pub. L. 102–190, div. A, title X, §1002(a)(2), Dec. 5, 1991, 105 Stat. 1455, substituted ''Defense Budget Matters'' for ''Regular Components'' and inserted ''221'' in item for chapter 9.

1988—Pub. L. 100–456, div. A, title XI, §1104(b), Sept. 29, 1988, 102 Stat. 2046, substituted ''Support for'' for ''Cooperation With'' and ''Agencies'' for ''Officials'' in item for chapter 18.

1987—Pub. L. 100–180, div. A, title III, §332(c), Dec. 4, 1987, 101 Stat. 1080, substituted ''Humanitarian and Other Assistance'' for ''Humanitarian and Civic Assistance Provided in Conjunction With Military Operations'' in item for chapter 20.

Pub. L. 100–26, §9(b)(4), Apr. 21, 1987, 101 Stat. 287, added item for chapter 21.

1986—Pub. L. 99–661, div. A, title III, §333(a)(2), Nov. 14, 1986, 100 Stat. 3859, added item for chapter 20.

Pub. L. 99–433, title VI, §605(a), Oct. 1, 1986, 100 Stat. 1075a, added items for chapters 2 and 6, inserted ''and Functions'' in item for chapter 3, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in item for chapter 4, substituted ''151'' for ''141'' as section number in item for chapter 5, reenacted item for chapter 7 without change, and inserted ''and Department of Defense Field activities'' in item for chapter 8.

1982—Pub. L. 97–269, title V, §501(b), Sept. 27, 1982, 96 Stat. 1145, added item for chapter 8.

1981—Pub. L. 97–86, title IX, §905(a)(2), Dec. 1, 1981, 95 Stat. 1116, added item for chapter 18.

1962—Pub. L. 87–651, title II, §203, Sept. 7, 1962, 76 Stat. 519, added item for chapter 4.

CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

§101. Definitions

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

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

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

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

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

(5) The term ''uniformed services'' means—

(A) the armed forces;

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

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

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

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

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

(9) The term ''Secretary concerned'' means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) is a land force;

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

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

(D) is federally recognized.

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

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

(A) is an air force;

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

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

(D) is federally recognized.

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

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

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

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

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

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

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

(4) The term ''active status'' means the status of a reserve commissioned officer, other than a commissioned warrant officer, who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.

(5) The term ''full-time National Guard duty'' means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of

Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

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

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 175 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 3; Sept. 2, 1958, Pub. L. 85–861, §§1(1), 33(a)(1), 72 Stat. 1437, 1564; June 25, 1959, Pub. L. 86–70, §6(a), 73 Stat. 142; July 12, 1960, Pub. L. 86–624, §4(a), 74 Stat. 411; Sept. 7, 1962, Pub. L. 87–649, §6(f)(1), 76 Stat. 494; Jan. 2, 1968, Pub. L. 90–235, §7(a)(1), 81 Stat. 762; Oct. 22, 1968, Pub. L. 90–623, §2(1), 82 Stat. 1314; Oct. 13, 1972, Pub. L. 92–492, §1, 86 Stat. 810; Dec. 12, 1980, Pub. L. 96–513, title I, §§101, 115(a), title V, §501(2), 94 Stat. 2839, 2877, 2907; July 10, 1981, Pub. L. 97–22, §2(a), 95 Stat. 124; Dec. 1, 1981, Pub. L. 97–86, title IV, §405(b)(1), 95 Stat. 1105; Oct. 19, 1984, Pub. L. 98–525, title IV, §414(a)(1), 98 Stat. 2518; Nov. 8, 1985, Pub. L. 99–145, title V, §514(b)(1), 99 Stat. 628; July 1, 1986, Pub. L. 99–348, title III, §303, 100 Stat. 703; Oct. 1, 1986, Pub. L. 99–433, title III, §302, 100 Stat. 1022; Apr. 21, 1987, Pub. L. 100–26, §7(i), (k)(1), 101 Stat. 282, 283; Dec. 4, 1987, Pub. L. 100–180, div. A, title XII, §§1231(1), (20), 1233(a)(2), 101 Stat. 1160, 1161; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1234(a)(1), 102 Stat. 2059; Nov. 5, 1990, Pub. L. 101–510, div. A, title XII, §1204, 104 Stat. 1658; Dec. 5, 1991, Pub. L. 102–190, div. A, title VI, §631(a), 105 Stat. 1380; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, §1051(a), 106 Stat. 2494; Oct. 5, 1994, Pub. L. 103–337, div. A, title V, §514, title XVI, §§1621, 1671(c)(1), 108 Stat. 2753, 2960, 3014.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101(1)	50:351 (clause (b)).	Sept. 16, 1942, ch. 561, §401 (clause (b)); added Apr. 1, 1944, ch. 150, §401 (clause (b)); restated Apr. 19, 1946, ch. 142, §401 (clause (b)), 60 Stat. 102.
101(2)	32:4c (1st 33 words).	
101(3)	[No source].	
101(4)	50:901(e).	
101(5)	5:181–1(c) (for definition purposes); 5:411a(a) (for definition purposes); 5:626(c) (for definition purposes).	July 9, 1952, ch. 608, §101(d) (less 2d sentence), (e), (g), §702 (for definition purposes), 66 Stat. 481, 482, 501.
101(6).	[No source].	
101(7)	5:171(b) (last 23 words of clause (1), for definition purposes).	
101(8)	10:600(a); 34:135(a).	July 26, 1947, ch. 343, §§205(c) (for definition purposes), 206(a) (for definition purposes), 207(c) (for definition purposes), 61 Stat. 501, 502.
101(9)	[No source].	
101(10)	32:2 (for definition purposes); 32:4b (for definition purposes).	
101(11).	50:1112(a) (for definition purposes).	
101(12)	10:1835 (less last 16 words, for definition purposes); 32:2 (for definition purposes); 32:4b (for definition purposes).	July 26, 1947, ch. 343, §201(b) (last 31 words of clause (1), for definition purposes); restated Aug. 10, 1949, ch. 412, §4 (last 31 words of clause (1) of 201(b), for definition purposes), 63 Stat. 579.
101(13).	50:1112(b) (for definition purposes).	
101(14).	5:181–3(b) (less last sentence); 10:1a(b) (less last sentence) 10:1801(b) (less last sentence); 37:231(c) (1st sentence, for definition purposes); 50:901(g).	June 3, 1916, ch. 134, §62 (1st 36 words of last proviso), 39 Stat. 198. June 3, 1916, ch. 134, §117 (for definition purposes), 39 Stat. 212.
101(15)	[No source].	
101(16)	10:600(b); 34:135(b).	June 3, 1916, ch. 134, §71 (for definition purposes); added June 15, 1933, ch. 87, §9 (for definition purposes), 48 Stat. 157; Oct. 12, 1949, ch. 681, §530 (for definition purposes), 63 Stat. 837; July 9, 1952, ch. 608, §803 (9th par., for definition purposes), 66 Stat. 505.
101(17)	5:181–3(b) (last sentence); 10:1a(b) (last sentence); 10:1801(b) (last sentence); 50:551(9).	
	[No source].	
101(18).	[No source].	
101(19)	[No source].	
101(20)	[No source].	
101(21)	10:1036e(d) (for definition purposes); 34: 440m(d) (for definition purposes).	
101(22)		
101(23)	[No source].	Sept. 19, 1951, ch. 407, §§2(b), 305 (less last 16 words, for definition purposes), 65 Stat. 326, 330.
101(24)	[No source].	
101(26)	[No source].	
101(27)	[No source].	
101(28)	[No source].	
101(29)	[No source].	
101(30)	[No source].	
101(31)	50:901(d) (less 2d sentence).	June 28, 1950, ch. 383, §2(b), 64 Stat. 263; July 9, 1952, ch. 608, §807(a), 66 Stat. 508.
101(32)	[No source].	Oct. 12, 1949, ch. 681, §102(c) (1st sentence, for definition purposes), 63 Stat. 804.
101(33)	[No source].	
101(34)	[No source].	May 5, 1950, ch. 169, §1 (Art. 1 (clause (9))), 64 Stat. 108. May 29, 1954, ch. 249, §2(a), (b), 68 Stat. 157.

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		June 29, 1948, ch. 708, § 306(d) (for definition purposes), 62 Stat. 1089.

The definitions in clauses (3), (15), (18)–(21), (23)–(30), and (31)–(33) reflect the adoption of terminology which, though undefined in the source statutes restated in this title, represents the closest practicable approximation of the ways in which the terms defined have been most commonly used. A choice has been made where established uses conflict.

In clause (2), the definition of ''Territory'' in 32:4c is executed throughout this revised title by specific reference, where applicable, to the Territories, Puerto Rico and the Canal Zone.

In clause (4), the definition of ''armed forces'' is based on the source statute instead of 50:551(2), which does not include an express reference to the Marine Corps. The words ''including all components thereof'' are omitted as surplusage.

In clause (5), the term ''Department'' is defined to give it the broad sense of ''Establishment'', to conform to the source statute and the usage preferred by the Department of Defense, instead of the more limited sense defined by 5:421g(a) and 423a(a), and 10:1a(d) and 1801(d).

In clause (6), the term ''executive part of the department'' is created for convenience in referring to what is described in the source statutes for this title as ''department'' in the limited sense of the executive part at the seat of government. This is required by the adoption of the word ''department'' in clause (5) to cover the broader concept of ''establishment''.

In clause (8), the term ''Secretary concerned'' is created and defined for legislative convenience.

In clause (9), a definition of ''National Guard'' is inserted for clarity.

In clause (10)(A), the words ''a land force'' are substituted for 32:2 (as applicable to Army National Guard). The National Defense Act of 1916, § 117 (last 66 words), 39 Stat. 212, is not contained in 32:2. It is also omitted from the revised section as repealed by the Act of February 28, 1925, ch. 374, § 3, 43 Stat. 1081.

In clauses (10) and (11), the word ''Army'' is inserted to distinguish the organizations defined from their Air Force counterparts.

In clauses (10) and (12), the words ''unless the context or subject matter otherwise requires'' and ''as provided in this title'', in 32:4b, are omitted as surplusage.

In clauses (10)(B) and (12)(B), the words ''has its officers appointed'' are substituted for the word ''officered'', in 32:4b.

In clauses (11) and (13), only that much of the description of the composition of the Army National Guard of the United States and the Air National Guard of the United States is used as is necessary to distinguish these reserve components, respectively, from the other reserve components.

In clause (12)(A), the words ''an air force'' are substituted for the words ''for which Federal responsibility has been vested in the Secretary of the Air Force or the Department of the Air Force pursuant to law'', in 10:1835, and for 32:2 (as applicable to Air National Guard), to make the definition of ''Air National Guard'' parallel with the definition of ''Army National Guard'', and to make explicit the intent of Congress, in creating the Air National Guard, that the organized militia henceforth should consist of three mutually exhaustive classes comprising the Army, Air, and Naval militia.

In clause (14), the definition of ''officer'' is based on the source statutes instead of 50:551(5), which excludes warrant officers. The reference to appointment in 10:1a(b) (2d sentence and 10:1801(b) (2d sentence), and the words ''commissioned warrant officer'', ''flight officer'', and ''either permanent or temporary'', in 37:231(c) (1st sentence), are omitted as surplusage. 5:181–3(b) (1st sentence), 10:1a(b) (1st sentence), and 10:1801(b) (1st sentence) are omitted as covered by the definitions in clauses (14) and (16) of the revised section and by section 3062(c) and section 8062(d) of this title.

In clause (16), the words ''unless otherwise qualified'', ''permanent or temporary'', and ''in the Army, Navy, Air Force, Marine Corps, or Coast Guard, including any component thereof'' are omitted as surplusage. The word ''person'' is substituted for the word ''officer''.

In clause (22), the definition of ''active duty'' is based on the definition of ''active Federal service'' in the source statute, since it is believed to be closer to general usage than the definition in 50:901(b), which excludes active duty for training from the general concept of active duty.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101(25)	50:1181(6).	Sept. 3, 1954, ch. 1257, § 102(6), 68 Stat. 1150.

The words '', other than a commissioned warrant officer,'' are inserted to reflect 50:1181(1).

[Clause (35).] The word ''original'' is defined to make clear that when used in relation to an appointment it refers to the member's first appointment in his current series of appointments and excludes any appointment made before a lapse in service.

REFERENCES IN TEXT

Section 125(d) of this title, referred to in subsec. (a)(12)(A), was repealed by Pub. L. 99–433, title III, § 301(b)(1), Oct. 1, 1986, 100 Stat. 1022.

AMENDMENTS

1994—Subsec. (a)(13)(B). Pub. L. 103–337, § 1671(c)(1), substituted ''688, 12301(a), 12302, 12304, 12305, or 12406'' for ''672(a), 673, 673b, 673c, 688, 3500, or 8500''.

Subsec. (c)(7). Pub. L. 103–337, § 1621, added par. (7).

Subsec. (d)(6), (7). Pub. L. 103–337, § 514, added par. (6) and redesignated former par. (6) as (7).

1992—Pub. L. 102–484 amended section generally, substituting subsecs. (a) to (f) for former pars. (1) to (47) which defined terms for purposes of this title.

1991—Par. (47). Pub. L. 102–190 added par. (47).

1990—Par. (46). Pub. L. 101–510 added par. (46).

1988—Pars. (3), (10), (12). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''the Virgin Islands,'' in par. (3) and after ''Puerto Rico,'' in pars. (10) and (12).

1987—Par. (1). Pub. L. 100–26, § 7(k)(1)(A), inserted ''The term'' after par. designation.

Par. (2). Pub. L. 100–26, § 7(1)(k)(B), inserted ''the term'' after ''Air National Guard of the United States,''.

Pub. L. 100–180, § 1233(a)(2), amended directory language of Pub. L. 100–26, § 7(k)(1)(C), by adding par. (2) to those pars. excepted from direction that initial letter of first word after open quotation marks in each par. be made lowercase rather than uppercase.

Pars. (3) to (7). Pub. L. 100–26, § 7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (8) to (13). Pub. L. 100–26, § 7(k)(1)(A), inserted ''The term'' after par. designation.

Par. (14). Pub. L. 100–180, § 1231(1), inserted ''a'' after ''means''.

Pub. L. 100–26, § 7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (15) to (19). Pub. L. 100–26, § 7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Par. (20). Pub. L. 100–180, § 1231(20), substituted ''The term 'rate'' for '' 'Rate'' in second sentence.

Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (21) to (43). Pub. L. 100–26, §7(k)(1)(A), (C), inserted ''The term'' after par. designation and struck out uppercase letter of first word after open quotation marks and substituted lowercase letter.

Pars. (44), (45). Pub. L. 100–26, §7(i)(1), (k)(1)(A), inserted ''The term'' after par. designation and substituted ''October 1, 1986'' for ''the date of the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986''.

1986—Par. (43). Pub. L. 99–348 added par. (43).

Pars. (44), (45). Pub. L. 99–433 added pars. (44) and (45).

1985—Par. (41). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Par. (22). Pub. L. 98–525, §414(a)(1)(A), inserted ''It does not include full-time National Guard duty.''

Par. (24). Pub. L. 98–525, §414(a)(1)(B), inserted ''or full-time National Guard duty''.

Par. (42). Pub. L. 98–525, §414(a)(1)(C), added par. (42).

1981—Par. (41). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22 inserted ''or Coast Guard'' after ''Navy''.

1980—Par. (22). Pub. L. 96–513, §501(2), struck out ''duty on the active list,'' after ''It includes''.

Par. (36). Pub. L. 96–513, §115(a), struck out par. (36) which provided that ''dependent'', with respect to a female member of an armed force, did not include her husband, unless he was in fact dependent on her for his chief support, or her child, unless his father was dead or he was in fact dependent on her for his chief support.

Pars. (37) to (41). Pub. L. 96–513, §101, added pars. (37) to (41).

1972—Par. (2). Pub. L. 92–492 inserted ''Except as provided in section 101(1) of title 32 for laws relating to the militia, the National Guard, the Army National Guard of the United States,'' before ''Territory''.

1968—Par. (8)(D). Pub. L. 90–623 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Par. 36. Pub. L. 90–235 added par. (36).

1962—Par. (31)(A). Pub. L. 87–649 substituted ''section 206 of title 37'' for ''section 301 of title 37''.

1960—Par. (2). Pub. L. 80–624 struck out reference to Hawaii.

1959—Par. (2). Pub. L. 80–70 struck out reference to Alaska.

1958—Par. (25). Pub. L. 85–861, §1(1), added par. (25).

Par. (35). Pub. L. 85–861, §33(a)(1), added par. (35).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(1) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1621 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1233(c)[(1)] of Pub. L. 100–180 provided that: ''The amendments made by subsection (a) [amending this section, section 2432 of this title, and section 406b of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of the Defense Technical Corrections Act of 1987 (Public Law 100–26).''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 405(f) of Pub. L. 97–86 provided that: ''The amendments made by this section [amending this section, sections 525, 601, 611, 612, 619, 625, 634, 635, 637, 638, 645, 741, 5138, 5149, 5155, 5442, 5444, 5457, 5501, and 6389 of this title, section 201 of Title 37, Pay and Allowances of the Uniformed Services, and a provision set out as a note under section 611 of this title] shall take effect as of September 15, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 701 of Pub. L. 96–513 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments made by this Act [see Tables for classification] shall take effect on September 15, 1981.

''(b)(1) The authority to prescribe regulations under the amendments made by titles I through IV and under the provisions of title VI shall take effect on the date of the enactment of this Act [Dec. 12, 1980].

''(2) The amendment made by section 415 [enacting section 302(h) of Title 37, Pay and Allowances of the Uniformed Services] shall take effect as of July 1, 1980.

''(3) The amendments made by part B of title V shall take effect on the date of the enactment of this Act [Dec. 12, 1980].

''(4) Part D of title VI shall take effect on the date of the enactment of this Act [Dec. 12, 1980].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Inconsistent Provisions note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 33(g) of Pub. L. 85–861 provided that: ''This section [see Tables for classification] is effective as of August 10, 1956, for all purposes.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–25, §1, Apr. 6, 1991, 105 Stat. 75, provided that: ''This Act [see Tables for classification] may be cited as the 'Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991'.''

SHORT TITLE OF 1987 AMENDMENT

Section 1 of Pub. L. 100–26 provided that: ''This Act [see Tables for classification] may be cited as the 'Defense Technical Corrections Act of 1987'.''

SHORT TITLE OF 1981 AMENDMENT

Section 1(a) of Pub. L. 97–22 provided that: ''this Act [see Tables for classification] may be cited as the 'Defense Officer Personnel Management Act Technical Corrections Act'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1(a) of Pub. L. 96–513 provided that: ''This Act [see Tables for classification] may be cited as the 'Defense Officer Personnel Management Act'.''

SAVINGS PROVISION

Section 703 of Pub. L. 96–513 provided that: ''Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act [see Tables for classification] do not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of this Act [see Effective Date of 1980 Amendment note above].''

LAWS IN SUSPENDED STATUS PRIOR TO 1980 AMENDMENT BY PUB. L. 96–513

Section 702 of Pub. L. 96–513 provided that: ''If a provision of law that is in a suspended status on the day before the effective date of this Act [see Effective Date of 1980 Amendment note above] is amended by this Act [see Tables for classification], the suspended status of that provision is not affected by that amendment.''

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary

of Defense'' to be exercised, with respect to Coast and Geodetic Survey [now commissioned officer corps of National Oceanic and Atmospheric Administration], by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

Authority vested by this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

COORDINATION OF SECTION 1070 OF PUB. L. 103–337 WITH OTHER PROVISIONS OF PUB. L. 103–337

Section 1070(h) of Pub. L. 103–337 provided that: ''For purposes of applying amendments made by provisions of this Act other than this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

COORDINATION OF SECTION 1182 OF PUB. L. 103–160 WITH OTHER PROVISIONS OF PUB. L. 103–160

Pub. L. 103–160, div. A, title XI, §1182(h), Nov. 30, 1993, 107 Stat. 1774, provided that: ''For purposes of applying the amendments made by provisions of this Act other than this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

COORDINATION OF SECTIONS 1052, 1053, AND 1054 OF PUB. L. 102–484 WITH OTHER PROVISIONS OF PUB. L. 102–484

Section 1055 of Pub. L. 102–484 provided that: ''For purposes of applying the amendments made by provisions of this Act other than sections 1052, 1053, and 1054 [see Tables for classification], those sections shall be treated as having been enacted immediately before the other provisions of this Act.''

DEFINITIONS FOR PURPOSES OF PUB. L. 102–25

Pub. L. 102–25, §3, Apr. 6, 1991, 105 Stat. 77, as amended by Pub. L. 102–190, div. A, title XII, §1203(a), Dec. 5, 1991, 105 Stat. 1508, provided that: ''For the purposes of this Act [see Short Title of 1991 Amendment note above]:

''(1) The term 'Operation Desert Storm' means operations of United States Armed Forces conducted as a consequence of the invasion of Kuwait by Iraq (including operations known as Operation Desert Shield, Operation Desert Storm, and Operation Provide Comfort).

''(2) The term 'incremental costs associated with Operation Desert Storm' means costs referred to in section 251(b)(2)(D)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(ii)).

''(3) The term 'Persian Gulf conflict' means the period beginning on August 2, 1990, and ending thereafter on the date prescribed by Presidential proclamation or by law.

''(4) The term 'congressional defense committees' has the meaning given that term in section 3 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1498).''

CROSS REFERENCES

Army, see section 3001 of this title.

Enlistment, Army or Air Force, see sections 3251, 8251 of this title.

Partial mobilization, see section 10207 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 8331, 8401; title 14 section 423; title 18 section 232; title 33 sections 853*o*, 857–1; title 37 section 101; title 39 section 3401; title 42 sections 5170b, 7235, 12639; title 50 App. section 592.

CHAPTER 2—DEPARTMENT OF DEFENSE

Sec.
111. Executive department.
112. Department of Defense: seal.
113. Secretary of Defense.
114. Annual authorization of appropriations.
[114a. Renumbered.]
115. Personnel strengths: requirement for annual authorization.
115a. Annual manpower requirements report.
[115b. Renumbered.]
116. Annual operations and maintenance report.
[117, 118. Repealed.]
119. Special access programs: congressional oversight.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(1), Oct. 5, 1994, 108 Stat. 3013, struck out item 115b ''Annual report on National Guard and reserve component equipment''.

1992—Pub. L. 102–484, div. A, title X, §1002(d)(1), Oct. 23, 1992, 106 Stat. 2480, struck out item 114a ''Multiyear Defense Program: submission to Congress; consistency in budgeting''.

1990—Pub. L. 101–510, div. A, title XIV, §1402(a)(3)(B), Nov. 5, 1990, 104 Stat. 1674, which directed amendment of item 114a by substituting ''Multiyear'' for ''Five-year'', was executed by substituting ''Multiyear'' for ''Five-Year'' as the probable intent of Congress.

Pub. L. 101–510, div. A, title XIII, §1331(1), title XIV, §1483(c)(1), Nov. 5, 1990, 104 Stat. 1673, 1715, substituted ''Personnel strengths: requirement for annual authorization'' for ''Annual authorization of personnel strengths; annual manpower requirements report'' in item 115, added items 115a and 115b, and struck out items 117 ''Annual report on North Atlantic Treaty Organization readiness'' and 118 ''Sale or transfer of defense articles: reports to Congress''.

1989—Pub. L. 101–189, div. A, title XVI, §1602(a)(2), Nov. 29, 1989, 103 Stat. 1597, added item 114a.

1987—Pub. L. 100–180, div. A, title XI, §1132(a)(2), Dec. 4, 1987, 101 Stat. 1152, added item 119.

1986—Pub. L. 99–433, title I, §101(a)(1), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 2, consisting of items 111 to 118.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 section 1087vv.

§ 111. Executive department

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

(b) The Department is composed of the following:

(1) The Office of the Secretary of Defense.

(2) The Joint Chiefs of Staff.

(3) The Joint Staff.

(4) The Defense Agencies.

(5) Department of Defense Field Activities.

(6) The Department of the Army.

(7) The Department of the Navy.

(8) The Department of the Air Force.

(9) The unified and specified combatant commands.

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

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

(c) If the President establishes or designates an office, agency, activity, or command in the Department of Defense of a kind other than

those described in paragraphs (1) through (9) of subsection (b), the President shall notify Congress not later than 60 days thereafter.

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 517, §131; renumbered §111 and amended Pub. L. 99–433, title I, §101(a)(2), (b), Oct. 1, 1986, 100 Stat. 994, 995.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
131	5:171(a) (less last 10 words), (b).	July 26, 1947, ch. 343, §201(a) (less last 10 words), (b); restated Aug. 10, 1949, ch. 412, §4 (1st (less last 10 words) and 2d pars.), 63 Stat. 579.

The words ''There is established'', in 5 U.S.C. 171(a), are omitted as executed. 5 U.S.C. 171(b) (1st 26 words) is omitted as covered by the definitions of ''department'' and ''military departments'' in section 101(5) and (7), respectively, of this title. 5 U.S.C. 171(b) (27th through 49th words) is omitted as executed. 5 U.S.C. 171(b) (last 18 words) is omitted as surplusage.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 131 of this title as this section, designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

SHORT TITLE OF 1986 AMENDMENT

Section 1(a) of Pub. L. 99–433 provided that: ''This Act [see Tables for classification] may be cited as the 'Goldwater-Nichols Department of Defense Reorganization Act of 1986'.''

COMMISSION ON ROLES AND MISSIONS OF ARMED FORCES

Pub. L. 103–160, div. A, title IX, subtitle E, Nov. 30, 1993, 107 Stat. 1738, as amended by Pub. L. 103–337, div. A, title IX, §923(a)(1), (2), (b)–(d), Oct. 5, 1994, 108 Stat. 2830, 2831, provided that:

''SEC. 951. FINDINGS.

''Congress makes the following findings:

''(1) The current allocation of roles and missions among the Armed Forces evolved from the practice during World War II to meet the Cold War threat and may no longer be appropriate for the post-Cold War era.

''(2) Many analysts believe that a realignment of those roles and mission [sic] is essential for the efficiency and effectiveness of the Armed Forces, particularly in light of lower budgetary resources that will be available to the Department of Defense in the future.

''(3) The existing process of a triennial review of roles and missions by the Chairman of the Joint Chiefs of Staff pursuant to provisions of law enacted by the Goldwater-Nichols Department of Defense Reorganization Act of 1986 [see Short Title of 1986 Amendment note above] has not produced the comprehensive review envisioned by Congress.

''(4) It is difficult for any organization, and may be particularly difficult for the Department of Defense, to reform itself without the benefit and authority provided by external perspectives and analysis.

''SEC. 952. ESTABLISHMENT OF COMMISSION.

''(a) ESTABLISHMENT.—There is hereby established a commission to be known as the Commission on Roles and Missions of the Armed Forces (hereinafter in this subtitle referred to as the 'Commission').

''(b) COMPOSITION AND QUALIFICATIONS.—(1) The Commission shall be composed of eleven members. Members of the Commission shall be appointed by the Secretary of Defense.

''(2) The Commission shall be appointed from among private United States citizens with appropriate and diverse military, organizational, and management experiences and historical perspectives.

''(3) The Secretary shall designate one of the members as chairman of the Commission.

''(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''(d) INITIAL ORGANIZATIONAL REQUIREMENTS.—(1) The Secretary shall make all appointments to the Commission within 45 days after the date of the enactment of this Act [Nov. 30, 1993].

''(2) The Commission shall convene its first meeting within 30 days after the first date on which all members of the Commission have been appointed. At that meeting, the Commission shall develop an agenda and a schedule for carrying out its duties.

''SEC. 953. DUTIES OF COMMISSION.

''(a) IN GENERAL.—The Commission shall—

''(1) review the efficacy and appropriateness for the post-Cold War era of the current allocations among the Armed Forces of roles, missions, and functions;

''(2) evaluate and report on alternative allocations of those roles, missions, and functions; and

''(3) make recommendations for changes in the current definition and distribution of those roles, missions, and functions.

''(b) REVIEW OF POTENTIAL MILITARY OPERATIONS.—The Commission shall review the types of military operations that may be required in the post-Cold War era, taking into account the requirements for success in various types of operations. As part of such review, the Commission shall take into consideration the official strategic planning of the Department of Defense. The types of operations to be considered by the Commission as part of such review shall include the following:

''(1) Defense of the United States.

''(2) Warfare against other national military forces.

''(3) Participation in peacekeeping, peace enforcement, and other nontraditional activities.

''(4) Action against nuclear, chemical, and biological weapons capabilities in hostile hands.

''(5) Support of law enforcement.

''(6) Other types of operations as specified by the chairman of the Commission.

''(c) COMMISSION TO DEFINE BROAD MISSION AREAS AND KEY SUPPORT REQUIREMENTS.—As a result of the review under subsection (b), the Commission shall define broad mission areas and key support requirements for the United States military establishment as a whole.

''(d) DEVELOPMENT OF CONCEPTUAL FRAMEWORK FOR ORGANIZATIONAL ALLOCATIONS.—The Commission shall develop a conceptual framework for the review of the organizational allocation among the Armed Forces of military roles, missions, and functions. In developing that framework, the Commission shall consider—

''(1) static efficiency (such as duplicative overhead and economies of scale);

''(2) dynamic effectiveness (including the benefits of competition and the effect on innovation);

''(3) interoperability, responsiveness, and other aspects of military effectiveness in the field;

''(4) gaps in mission coverage and so-called orphan missions that are inadequately served by existing organizational entities;

''(5) division of responsibility on the battlefield;

''(6) exploitation of new technology and operational concepts;

''(7) the degree of disruption that a change in roles and missions would entail;

''(8) the experience of other nations; and

''(9) the role of the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components.

''(e) RECOMMENDATIONS CONCERNING MILITARY ROLES AND MISSIONS.—Based upon the conceptual framework

developed under subsection (d) to evaluate possible changes to the existing allocation among the Armed Forces of military roles, missions, and functions, the Commission shall recommend—

''(1) the functions for which each military department should organize, train, and equip forces;

''(2) the missions of combatant commands; and

''(3) the roles that Congress should assign to the various military elements of the Department of Defense, including the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components.

''(f) RECOMMENDATIONS CONCERNING CIVILIAN ELEMENTS OF DEPARTMENT OF DEFENSE.—The Commission may address the roles, missions, and functions of civilian portions of the Department of Defense and other national security agencies to the extent that changes in these areas are collateral to changes considered in military roles, missions, and functions.

''(g) RECOMMENDATIONS CONCERNING PROCESS FOR FUTURE CHANGES.—The Commission shall also recommend a process for continuing to adapt the roles, missions, and functions of the Armed Forces to future changes in technology and in the international security environment.

''(h) RECOMMENDATIONS CONCERNING RESERVE COMPONENTS.—The Commission shall also address the roles, missions, and functions of the Army National Guard of the United States, the Air National Guard of the United States, and the other reserve components within the total force of the Armed Forces, particularly in light of lower budgetary resources that will be available to the Department of Defense in the future.

''(i) RECOMMENDATIONS CONCERNING PROGRAMS AND FORCE STRUCTURE.—The Commission may also recommend changes that would better align programs and force structure with projected missions and threats.

''SEC. 954. REPORTS.

''(a) IMPLEMENTATION PLAN.—Not later than three months after the date on which all members of the Commission have been appointed, the Commission shall transmit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report setting forth its plan for the work of the Commission. The plan shall be developed following discussions with the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the chairmen of those committees.

''(b) COMMISSION REPORT.—The Commission shall, not later than one year after the date of its first meeting, submit to the committees named in subsection (a) and to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for legislation that the Commission considers advisable.

''(c) ACTION BY SECRETARY OF DEFENSE.—The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall submit comments on the Commission's report to the committees referred to in subsection (b) not later than 90 days following receipt of the report.

''SEC. 955. POWERS.

''(a) HEARINGS.—The Commission or, at its direction, any panel or member of the Commission, may, for the purpose of carrying out the provisions of this subtitle, hold hearings, sit and act at times and places, take testimony, receive evidence, and administer oaths to the extent that the Commission or any panel or member considers advisable.

''(b) INFORMATION.—The Commission may secure directly from the Department of Defense and any other Federal department or agency any information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this subtitle. Upon request of the chairman of the Commission, the head of such department or agency shall furnish such information expeditiously to the Commission.

''SEC. 956. COMMISSION PROCEDURES.

''(a) MEETINGS.—The Commission shall meet at the call of the chairman.

''(b) QUORUM.—(1) Seven members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

''(2) The Commission shall act by resolution agreed to by a majority of the members of the Commission.

''(c) PANELS.—The Commission may establish panels composed of less than the full membership of the Commission for the purpose of carrying out the Commission's duties. The actions of each such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

''(d) AUTHORITY OF INDIVIDUALS TO ACT FOR COMMISSION.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take under this subtitle.

''SEC. 957. PERSONNEL MATTERS; EXPERT SERVICES.

''(a) PAY OF MEMBERS.—Each member of the Commission shall be paid at a rate equal to the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without pay in addition to that received for their services as officers or employees of the United States.

''(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

''(c) STAFF.—(1) The chairman of the Commission may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, appoint a staff director and such additional personnel as may be necessary to enable the Commission to perform its duties. The appointment of a staff director shall be subject to the approval of the Commission.

''(2) The chairman of the Commission may fix the pay of the staff director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay fixed under this paragraph for the staff director may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title and the rate of pay for other personnel may not exceed the maximum rate payable for grade GS–15 of the General Schedule.

''(d) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the chairman of the Commission, the head of any Federal department or agency may detail, on a nonreimbursable basis, any personnel of that department or agency to the Commission to assist it in carrying out its duties.

''(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule under section 5316 of such title.

''(f) FFRDC SUPPORT.—(1) Upon the request of the chairman of the Commission, the Secretary of Defense shall make available to the Commission, without reimbursement, the services of any federally funded research and development center that is covered by a sponsoring agreement of the Department of Defense.

The cost of the services made available under this subsection may not exceed $20,000,000.

''(2) Notwithstanding any other provision of law, any analytic support or related services provided by such a center to the Commission shall not be subject to any overall ceiling established by this or any other Act on the activities or budgets of such centers.

''SEC. 958. MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

''(a) POSTAL AND PRINTING SERVICES.—The Commission may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(b) MISCELLANEOUS ADMINISTRATIVE AND SUPPORT SERVICES.—The Secretary of Defense shall furnish the Commission, on a reimbursable basis, any administrative and support services requested by the Commission.

''(c) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

''(d) TRAVEL.—To the maximum extent practicable, the members and employees of the Commission shall travel on military aircraft, military ships, military vehicles, or other military conveyances when travel is necessary in the performance of a responsibility of the Commission, except that no such aircraft, ship, vehicle, or other conveyance may be scheduled primarily for the transportation of any such member or employee when the cost of commercial transportation is less expensive.

''SEC. 959. PAYMENT OF COMMISSION EXPENSES.

''The compensation, travel expenses, and per diem allowances of members and employees of the Commission shall be paid out of funds available to the Department of Defense for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department of Defense. The other expenses of the Commission shall be paid out of funds available to the Department of Defense for the payment of similar expenses incurred by that Department.

''SEC. 960. TERMINATION OF THE COMMISSION.

''The Commission shall terminate on the last day of the sixteenth month that begins after the date of its first meeting, but not earlier than 30 days after the date of the Secretary of Defense's submission of comments on the Commission's report.''

[Pub. L. 103–337, div. A, title IX, §923(a)(3), (4), Oct. 5, 1994, 108 Stat. 2830, provided that:

[''(3) The additional members of the Commission on Roles and Missions of the Armed Forces authorized by the amendment made by paragraph (1) [amending section 952(b)(1) of Pub. L. 103–160, set out above] shall be appointed by the Secretary of Defense not later than 30 days after the date of the enactment of this Act [Oct. 5, 1994].

[''(4) At least one of the additional members of the Commission appointed pursuant to the amendment made by paragraph (1) shall have previous military experience and management experience with the reserve components.'']

TERMINATION OF DEPARTMENT OF DEFENSE REPORTING REQUIREMENTS DETERMINED BY SECRETARY OF DEFENSE TO BE UNNECESSARY OR INCOMPATIBLE WITH EFFICIENT MANAGEMENT OF DEPARTMENT OF DEFENSE

Pub. L. 103–160, div. A, title XI, §1151, Nov. 30, 1993, 107 Stat. 1758, provided that:

''(a) TERMINATION OF REPORT REQUIREMENTS.—Unless otherwise provided by a law enacted after the date of the enactment of this Act [Nov. 30, 1993], each provision of law requiring the submittal to Congress (or any committee of Congress) of any report specified in the list submitted under subsection (b) shall, with respect to that requirement, cease to be effective on October 30, 1995.

''(b) PREPARATION OF LIST.—(1) The Secretary of Defense shall submit to Congress a list of each provision of law that, as of the date specified in subsection (c), imposes upon the Secretary of Defense (or any other officer of the Department of Defense) a reporting requirement described in paragraph (2). The list of provisions of law shall include a statement or description of the report required under each such provision of law.

''(2) Paragraph (1) applies to a requirement imposed by law to submit to Congress (or specified committees of Congress) a report on a recurring basis, or upon the occurrence of specified events, if the Secretary determines that the continued requirement to submit that report is unnecessary or incompatible with the efficient management of the Department of Defense.

''(3) The Secretary shall submit with the list an explanation, for each report specified in the list, of the reasons why the Secretary considers the continued requirement to submit the report to be unnecessary or incompatible with the efficient management of the Department of Defense.

''(c) SUBMISSION OF LIST.—The list under subsection (a) shall be submitted not later than April 30, 1994.

''(d) SCOPE OF SECTION.—For purposes of this section, the term 'report' includes a certification, notification, or other characterization of a communication.

''(e) INTERPRETATION OF SECTION.—This section does not require the Secretary of Defense to review each report required of the Department of Defense by law.''

REPORT PROVISIONS PREVIOUSLY TERMINATED BY GOLDWATER-NICHOLS ACT

Pub. L. 101–510, div. A, title XIII, §1321, Nov. 5, 1990, 104 Stat. 1670, provided that section 1322 of Pub. L. 101–510, with respect to Goldwater-Nichols terminations, repeals certain provisions of law containing terminated report requirements and section 1323 of Pub. L. 101–510, with respect to such terminations, restores effectiveness of selected other provisions of law containing such requirements and described Goldwater-Nichols terminations for purposes of such repeals or restorations.

RESTORATION OF CERTAIN REPORTING REQUIREMENTS OF TITLE 10 TERMINATED BY GOLDWATER-NICHOLS ACT

Pub. L. 101–510, div. A, title XIII, §1323, Nov. 5, 1990, 104 Stat. 1672, restored effectiveness of following report and notification provisions previously terminated by section 602(c) of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, formerly set out below: (1) the quarterly report required by section 127(c) of this title relating to emergency and extraordinary expenses, (2) the notifications required by section 2672a(b) of this title relating to urgent acquisitions of interests in land, (3) the notifications required by section 7308(c) of this title relating to the transfer or gift of obsolete, condemned, or captured vessels, and (4) the notifications required by section 7309(b) of this title relating to construction or repair of vessels in foreign shipyards.

GOLDWATER-NICHOLS DEPARTMENT OF DEFENSE REORGANIZATION ACT OF 1986; CONGRESSIONAL DECLARATION OF POLICY

Section 3 of Pub. L. 99–433 provided that: ''In enacting this Act [see Short Title of 1986 Amendment note above], it is the intent of Congress, consistent with the congressional declaration of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401)—

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

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

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

''(4) to ensure that the authority of the commanders of the unified and specified combatant commands is fully commensurate with the responsibility of

those commanders for the accomplishment of missions assigned to their commands;

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

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

''(7) to improve joint officer management policies; and

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

REDUCTION OF REPORTING REQUIREMENTS

Section 602 of Pub. L. 99–433, as amended by Pub. L. 100–180, div. A, title XIII, § 1314(a)(4), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title II, § 243, Nov. 29, 1989, 103 Stat. 1402; Pub. L. 101–510, div. A, title XIII, § 1324, Nov. 5, 1990, 104 Stat. 1673; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, directed Secretary of Defense to compile a list of all provisions of law in effect on or after Oct. 1, 1986, and before Feb. 1, 1987, which require President or any official or employee of Department of Defense to submit a report, notification, or study to Congress or any committee of Congress and to submit this list not later than six months after Oct. 1, 1986, with any recommendation or draft of legislation to implement any changes in law recommended by the Secretary.

LEGISLATION TO MAKE REQUIRED CONFORMING CHANGES IN LAW

Section 604 of Pub. L. 99–433 directed Secretary of Defense, not later than six months after Oct. 1, 1986, to submit to Committees on Armed Services of Senate and House of Representatives a draft of legislation to make any technical and conforming changes to title 10, United States Code, and other provisions of law that are required or should be made by reason of the amendments made by Pub. L. 99–433.

READINESS STATUS OF MILITARY FORCES OF THE NORTH ATLANTIC TREATY ORGANIZATION; ASSESSMENT, FINDINGS, AND REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 96–107, title VIII, § 808, Nov. 9, 1979, 93 Stat. 814, which directed Secretary of Defense to report annually to Congress on readiness of military forces of NATO, was repealed and restated as section 133a [now § 117] of this title by Pub. L. 97–295, §§ 1(2)(A), 6(b), Oct. 12, 1982, 96 Stat. 1287, 1314.

DEFENSE MANPOWER COMMISSION

Pub. L. 93–155, title VII, §§ 701–708, Nov. 16, 1973, 87 Stat. 609–611, established the Commission; provided for its composition, duties, powers, compensation, staff, appropriations, and use of General Services Administration; and directed that interim reports to President and Congress be submitted and that Commission terminate 60 days after its final report which was to be submitted not more than 24 months after appointment of Commission.

AIR FORCE RESERVE AND AIR NATIONAL GUARD OF UNITED STATES; STUDY AND INVESTIGATION OF RELATIVE STATUS; ADVANTAGES AND DISADVANTAGES OF ALTERNATIVES; MODERNIZATION AND MANPOWER NEEDS; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 93–155, title VIII, § 810, Nov. 16, 1973, 87 Stat. 618, directed the Secretary of Defense to study the relative status of the Air Force Reserve and the Air National Guard of the United States; to measure the effects on costs and combat capability as well as other advantages and disadvantages of (1) merging the Reserve into the Guard, (2) merging the Guard into the Reserve, and (3) retaining the status quo; and to consider the modernization needs and manpower problems of both; and also directed that a report of such study be submitted to the President and to the Congress no later than Jan. 31, 1975.

REORGANIZATION PLAN NO. 6 OF 1953

Eff. June 30, 1953, 18 F.R. 3743, 67 Stat. 638, as amended Aug. 6, 1958, Pub. L. 85–559, § 10(b), 72 Stat. 521; Sept. 7, 1962, Pub. L. 87–651, title III, § 307C, 76 Stat. 526

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 30, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

DEPARTMENT OF DEFENSE

SECTION 1. TRANSFERS OF FUNCTIONS

(a) All functions of the Munitions Board, the Research and Development Board, the Defense Supply Management Agency, and the Director of Installations are hereby transferred to the Secretary of Defense.

(b) The selection of the Director of the Joint Staff by the Joint Chiefs of Staff, and his tenure, shall be subject to the approval of the Secretary of Defense.

(c) The selection of the members of the Joint Staff by the Joint Chiefs of Staff, and their tenure, shall be subject to the approval of the Chairman of the Joint Chiefs of Staff.

(d) The functions of the Joint Chiefs of Staff with respect to managing the Joint Staff and the Director thereof are hereby transferred to the Chairman of the Joint Chiefs of Staff.

SEC. 2. ABOLITION OF AGENCIES AND FUNCTIONS

(a) There are hereby abolished the Munitions Board, the Research and Development Board, and the Defense Supply Management Agency.

(b) The offices of Chairman of the Munitions Board, Chairman of the Research and Development Board, Director of the Defense Supply Management Agency, Deputy Director of the Defense Supply Management Agency, and Director of Installations are hereby abolished.

(c) The Secretary of Defense shall provide for winding up any outstanding affairs of the said abolished agency, boards, and offices, not otherwise provided for in this reorganization plan.

(d) The function of guidance to the Munitions Board in connection with strategic and logistic plans as required by section 213(c) of the National Security Act of 1947, as amended [section 171h(c) of former Title 5], is hereby abolished.

SEC. 3. ASSISTANT SECRETARIES OF DEFENSE

[Repealed. Pub. L. 85–599, § 10(b), Aug. 6, 1958, 72 Stat. 521, eff. six months after Aug. 6, 1958. Section authorized appointment of six additional Assistant Secretaries and prescribed their duties and compensation.]

SEC. 4. GENERAL COUNSEL

[Repealed. Pub. L. 87–651, title III, § 307C, Sept. 7, 1962, 76 Stat. 526. Section authorized appointment of a General Counsel for the Department of Defense. See section 140 of this title.]

SEC. 5. PERFORMANCE OF FUNCTIONS

[Repealed. Pub. L. 87–651, title III, § 307C, Sept. 7, 1962, 76 Stat. 526. Section authorized the Secretary of Defense from time to time to make such provisions as he deemed appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of any function of the Secretary. See section 113 of this title.]

SEC. 6. MISCELLANEOUS PROVISIONS

(a) The Secretary of Defense may from time to time effect such transfers within the Department of Defense of any of the records, property, and personnel affected by this reorganization plan, and such transfers of unexpended balances (available or to be made available for use in connection with any affected function or agency) of appropriations, allocations, and other funds of such Department, as he deems necessary to carry out the provisions of this reorganization plan.

(b) Nothing herein shall affect the compensation of the Chairman of the Military Liaison Committee (63 Stat. 762).

EXECUTIVE ORDER NO. 12049

Ex. Ord. No. 12049, Mar. 27, 1978, 43 F.R. 13363, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, which provided for establishment of Defense Economic Adjustment Program and continued the Economic Adjustment Committee, was superseded by Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, set out as a note under section 2391 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2304 of this title.

§112. Department of Defense: seal

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

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 517, §132; renumbered §112 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(d)(1), Oct. 1, 1986, 100 Stat. 994, 1002.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
132	5:171a(e).	July 26, 1947, ch. 343, §202(e); added Aug. 10, 1949, ch. 412, §5 (10th par.), 63 Stat. 580.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 132 of this title as this section and substituted ''Department of Defense: seal'' for ''Seal'' in section catchline.

§113. Secretary of Defense

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

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

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

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

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

(3) a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a review of the effectiveness of chapters 51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers; and

(4) such recommendations as he considers appropriate.

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

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

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

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

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

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

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

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

(A) national security objectives and policies;

(B) the priorities of military missions; and

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

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

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

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

(2) Each such report shall—

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

(B) include an examination of the trends experienced in those capabilities and programs during the five years immediately preceding the year in which the report is transmitted and an examination of the expected trends in those capabilities and programs during the five years covered by the five-year defense program submitted to Congress during that year pursuant to section 114(g)[1] of this title;

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

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

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

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

(j)(1) Not later than April 8 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and Committees on Appropriations of the Senate and House of Representatives a report on the cost of stationing United States forces outside of the United States. Each such report shall include a detailed statement of the following:

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

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

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

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

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

[1] See References in Text note below.

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

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 517, § 133; amended Pub. L. 96–513, title V, § 511(3), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–252, title XI, § 1105, Sept. 8, 1982, 96 Stat. 739; Pub. L. 97–295, § 1(1), Oct. 12, 1982, 96 Stat. 1287; renumbered § 113 and amended Pub. L. 99–433, title I, §§ 101(a)(2), 102, 110(b)(2), (d)(2), title III, § 301(b)(2), title VI, § 603(b), Oct. 1, 1986, 100 Stat. 994, 996, 1002, 1022, 1075; Pub. L. 100–26, § 7(d)(1), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title XII, § 1214, Dec. 4, 1987, 101 Stat. 1157; Pub. L. 100–370, § 1(*o*)(1), July 19, 1988, 102 Stat. 850; Pub. L. 100–456, div. A, title VII, § 731, title XI, § 1101, Sept. 29, 1988, 102 Stat. 2003, 2042; Pub. L. 101–189, div. A, title XVI, § 1622(c)(1), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, § 1322(a)(1), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–190, div. A, title III, § 341, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 103–337, div. A, title X, § 1070(a)(1), title XVI, § 1671(c)(2), Oct. 5, 1994, 108 Stat. 2855, 3014.)

AMENDMENT OF SUBSECTION (c)(3)

Pub. L. 103–337, div. A, title XVI, §§ 1671(c)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 3014, 3026, provided that, effective Oct. 1, 1996, subsection (c)(3) of this section is amended by substituting ''chapters 1219 and 1401 through 1411 of this title'' for ''chapters 51, 337, 361, 363, 549, 573, 837, 861, and 863 of this title, as far as they apply to reserve officers''.

HISTORICAL AND REVISION NOTES
1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
133(a)	5:171(a) (last 10 words).	July 26, 1947, ch. 343, §§ 201(a) (last 10 words), 202(a),(b); restated Aug. 10, 1949, ch. 412, §§ 4 (last 10 words of 1st par.), 5 (1st and 2d pars.), 63 Stat. 579, 580.
133(b)	5:171a(a).	
133(c)	5:171a(b).	
133(d)	5:171a(d).	
	5:171a-1.	
	5:171a(f).	July 26, 1947, ch. 343, § 202(d); added Apr. 2, 1949, ch. 47, § 1; restated Aug. 10, 1949, ch. 412, § 5 (9th par.); restated Aug. 6, 1958, Pub. L. 85–599, § 3(b), 72 Stat. 516.
	5:171n(a) (as applicable to 5:171a(f)).	July 26, 1947, ch. 343, § 202(f); added Aug. 10, 1949, ch. 412, § 5 (11th par.), 63 Stat. 581.
	[Uncodified: 1953 Reorg. Plan No. 6, § 5, eff. June 30, 1953, 67 Stat. 639].	July 26, 1947, ch. 343, § 308(a) (as applicable to § 202(f)), 61 Stat. 509.
	5:171n(a).	July 9, 1952, ch. 608, § 257(e), 66 Stat. 497; Sept. 3, 1954, ch. 1257, § 702(c), 68 Stat. 1189. 1953 Reorg. Plan No. 6, § 5, eff. June 30, 1953, 67 Stat. 639.

In subsection (a), the last sentence is substituted for 5 U.S.C. 171a(a) (proviso).

In subsection (b), the words ''this title and section 401 of title 50'' are substituted for 5 U.S.C. 171a(b) (13th through 30th words of last sentence), since those words merely described the coverage of this title and section 401 of title 50.

In subsection (c), the words ''during the period covered by the report'' are inserted for clarity. The following substitutions are made: ''under section 125 of this title'' for ''pursuant to the provisions of this Act'' since 125 of this title relates to the duty of the Secretary of Defense to take action to save public funds and to eliminate duplication in the Department of Defense; and the last 22 words of clause (3) for 5 U.S.C. 171a–1 (last 13 words).

In subsection (d), section 5 of 1953 Reorganization Plan No. 6 is omitted as covered by 5 U.S.C. 171a(f).

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
133(e)	10:133 (note).	Oct. 7, 1975, Pub. L. 94–106, §812, 89 Stat. 540.

The words ''prepare and'' are omitted as surplus.

1988 ACT

Subsection (k) is based on Pub. L. 100–202, §101(b) [title VIII, §8042], 101 Stat. 1329–69.

Section 8042 of the FY88 Defense Appropriations Act (Public Law 100–202) established a requirement for the Secretary of Defense to submit an annual report on the cost of stationing United States forces overseas. Under that section, the annual report is to be sent to the Committees on Appropriations of the two Houses. In codifying that section as section 113(k) of title 10, the committee added the two Armed Services Committees as committees to be sent the annual report. This minor change from the source law does not change the nature of the report to be submitted.

The committee notes that the source section does not specify the period of time to be covered by the report. In the absence of statutory language specifying the period to be covered by the report, it would seem reasonable to conclude that the report should cover the previous fiscal year. The committee notes, however, that the report of the Senate Appropriations Committee on its FY88 defense appropriations bill (S. Rpt. 100–235) states that this new annual report ''should cover the budget years and the 2 previous fiscal years'' (page 54). The committee believes that such a requirement may be unnecessarily burdensome and in any case, if such a requirement is intended, should be stated in the statute. In the absence of clear intent, the provision is proposed to be codified without specifying the period of time to be covered by the annual report.

In codifying this provision, the committee also changed the term ''United States troops'' in the source law to ''United States forces'' for consistency in usage in title 10 and as being preferable usage. No change in meaning is intended. The committee also changed ''overseas'' to ''outside the United States'' and defined ''United States'' for this purpose to include the territories and possessions of the United States. The committee was concerned that the term ''overseas'' read literally could include Hawaii or Guam, an interpretation clearly not intended in enacting section 8042. The committee notes that the Senate report referred to above states ''For the purposes of this report [meaning the new DOD annual report], U.S. forces stationed overseas are considered to be those outside of the United States and its territories.''. The committee extrapolates from this statement that provisions in the report requirement relating to expenditures ''overseas'' and costs incurred ''overseas'' are also to be construed as relating to matters outside the United States and its territories and has prepared the codified provision accordingly.

REFERENCES IN TEXT

Section 114(g) of this title, referred to in subsec. (i)(2)(B), was repealed by Pub. L. 101–189, div. A, title XVI, §1602(b), Nov. 29, 1989, 103 Stat. 1597.

AMENDMENTS

1994—Subsec. (e)(2). Pub. L. 103–337, §1070(a)(1), substituted ''section 108'' for ''section 104''.

1991—Subsec. (i)(2)(C) to (E). Pub. L. 102–190 added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1990—Subsecs. (i) to (*l*). Pub. L. 101–510 redesignated subsecs. (j) to (*l*) as (i) to (k), respectively, and struck out former subsec. (i) which read as follows: ''The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, recommending the amount of funds to be appropriated to the Department of Defense for the next fiscal year for functions relating to the formulation and carrying out of Department of Defense policies on the control of technology transfer and activities related to the control of technology transfer. The Secretary shall include in that report the proposed allocation of the funds requested for such purpose and the number of personnel proposed to be assigned to carry out such activities during such fiscal year.''

1989—Subsec. (j)(2)(B). Pub. L. 101–189 substituted ''five-year defense program'' for ''Five-Year Defense Program''.

1988—Subsec. (j). Pub. L. 100–456, §731, designated existing provisions as par. (1), struck out provision requiring that each report be transmitted in both a classified and an unclassified form, and added pars. (2) and (3).

Subsec. (k). Pub. L. 100–370 added subsec. (k).

Subsec. (*l*). Pub. L. 100–456, §1101, added subsec. (*l*).

1987—Subsec. (e)(2). Pub. L. 100–26 inserted ''(50 U.S.C. 404a)'' after ''National Security Act of 1947''.

Subsec. (j). Pub. L. 100–180 added subsec. (j).

1986—Pub. L. 99–433, §110(d)(2), struck out '': appointment; powers and duties; delegation by'' at end of section catchline.

Subsecs. (a) to (e). Pub. L. 99–443, §101(a)(2), redesignated subsecs. (a) to (e) of section 133 of this title as subsecs. (a) to (e) of this section.

Pub. L. 99–433, §301(b)(2), substituted ''sections 125 and 191'' for ''section 125'' in subsec. (c)(2).

Pub. L. 99–433, §603(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''After consulting with the Secretary of State, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives before February 1 of each year a written report on—

''(1) the foreign policy and military force structure for the next fiscal year;

''(2) the relationship of that policy and structure to each other; and

''(3) the justification for the policy and structure.''

Subsecs. (f) to (h). Pub. L. 99–433, §102, added subsecs. (f) to (h).

Subsec. (i). Pub. L. 99–433, §§101(a)(2), 110(b)(2), successively redesignated subsec. (h) of section 138 of this title as subsec. (h) of section 114 of this title and then as subsec. (i) of this section.

1982—Subsec. (e). Pub. L. 97–295 added subsec. (e).

Subsec. (i) [formerly §138(h)]. Pub. L. 97–252, §1105, added subsec. (h). See 1986 Amendment note above.

1980—Subsec. (b). Pub. L. 96–513 substituted ''section 2 of the National Security Act of 1947 (50 U.S.C. 401)'' for ''section 401 of title 50''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(2) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L.

103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under various sections delegated to Secretary of Defense, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, as amended by Ex. Ord. No. 11294, Aug. 4, 1966, 31 F.R. 10601; see Ex. Ord. No. 10661, Feb. 27, 1956, 21 F.R. 1315; see Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841; all set out as notes under section 301 of Title 3, The President.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Secretary of Defense, see Parts 1, 2, and 5 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out as a note under section 3347 of Title 5, Government Organization and Employees.

REQUIREMENTS FOR AUTOMATED INFORMATION SYSTEMS OF DEPARTMENT OF DEFENSE

Section 381 of Pub. L. 103–337 provided that:

''(a) DETERMINATION REQUIRED.—(1) Not later than March 15 in each of 1995, 1996, and 1997, the Secretary of Defense shall—

''(A) determine whether each automated information system described in paragraph (2) meets the requirements set forth in subsection (b); and

''(B) take appropriate action to end the modernization or development by the Department of Defense of any such system that the Secretary determines does not meet such requirements.

''(2) An automated information system referred to in paragraph (1) is an automated information system—

''(A) that is undergoing modernization or development by the Department of Defense;

''(B) that exceeds $50,000,000 in value; and

''(C) that is not a migration system, as determined by the Enterprise Integration Executive Board of the Department of Defense.

''(b) REQUIREMENTS.—The use of an automated information system by the Department of Defense shall—

''(1) contribute to the achievement of Department of Defense strategies for the use of automated information systems;

''(2) as determined by the Secretary, provide an acceptable benefit from the investment in the system or make a substantial contribution to the performance of the defense mission for which the system is used;

''(3) comply with Department of Defense directives applicable to life cycle management of automated information systems; and

''(4) be based on guidance developed under subsection (c).

''(c) GUIDANCE FOR USE.—The Secretary of Defense shall develop guidance for the use of automated information systems by the Department of Defense. In developing the guidance, the Secretary shall consider the following:

''(1) Directives of the Office of Management and Budget applicable to returns of investment for such systems.

''(2) A sound, functional economic analysis.

''(3) Established objectives for the Department of Defense information infrastructure.

''(4) Migratory assessment criteria, including criteria under guidance provided by the Defense Information Systems Agency.

''(d) WAIVER.—(1) The Secretary of Defense may waive the requirements of subsection (a) for an automated information system if the Secretary determines that the purpose for which the system is being modernized or developed is of compelling military importance.

''(2) If the Secretary exercises the waiver authority provided in paragraph (1), the Secretary shall include the following in the next report required by subsection (f):

''(A) The reasons for the failure of the automated information system to meet all of the requirements of subsection (b).

''(B) A determination of whether the system is expected to meet such requirements in the future, and if so, the date by which the system is expected to meet the requirements.

''(e) PERFORMANCE MEASURES AND MANAGEMENT CONTROLS.—(1) The Secretary of Defense shall establish performance measures and management controls for the supervision and management of the activities described in paragraph (2). The performance measures and management controls shall be adequate to ensure, to the maximum extent practicable, that the Department of Defense receives the maximum benefit possible from the development, modernization, operation, and maintenance of automated information systems.

''(2) The activities referred to in paragraph (1) are the following:

''(A) Accelerated implementation of migration systems.

''(B) Establishment of data standards.

''(C) Process improvement.

''(f) REPORTS.—Not later than March 15 in each of 1995, 1996, and 1997, the Secretary of Defense shall submit to Congress a report on the establishment and implementation of the performance measures and management controls referred to in subsection (e)(1). Each such report shall also specify—

''(1) the automated information systems that, as determined under subsection (a), meet the requirements of subsection (b);

''(2) the automated information systems that, as determined under subsection (a), do not meet the requirements of subsection (b) and the action taken by the Secretary to end the use of such systems; and

''(3) the automated information systems that, as determined by the Enterprise Integration Executive Board, are migration systems.

''(g) REVIEW BY COMPTROLLER GENERAL.—Not later than April 30, 1995, the Comptroller General of the United States shall submit to Congress a report that contains an evaluation of the following:

''(1) The progress made by the Department of Defense in achieving the goals of the corporate information management program of the Department.

''(2) The progress made by the Secretary of Defense in establishing the performance measures and management controls referred to in subsection (e)(1).

''(3) The progress made by the Department of Defense in using automated information systems that meet the requirements of subsection (b).

''(4) The report required by subsection (f) to be submitted in 1995.

''(h) DEFINITIONS.—In this section:

''(1) The term 'automated information system' means an automated information system of the Department of Defense described in the exhibits designated as 'IT-43' in the budget submitted to Congress by the President for fiscal year 1995 pursuant to section 1105 of title 31, United States Code.

''(2) The term 'migration system' has the meaning given such term in the document entitled 'Department of Defense Strategy for Acceleration of Migration Systems and Data Standards' attached to the memorandum of the Department of Defense dated October 13, 1993 (relating to accelerated implementation of migration systems, data standards, and process improvement).''

DEPARTMENT OF DEFENSE POLICIES AND PROCEDURES ON DISCRIMINATION AND SEXUAL HARASSMENT

Section 532 of Pub. L. 103–337 provided that:

''(a) REPORT OF TASK FORCE.—(1) The Department of Defense Task Force on Discrimination and Sexual Harassment, constituted by the Secretary of Defense on March 15, 1994, shall transmit a report of its findings and recommendations to the Secretary of Defense not later than October 1, 1994.

''(2) The Secretary shall transmit to Congress the report of the task force not later than October 10, 1994.

''(b) SECRETARIAL REVIEW.—Not later than 45 days after receiving the report under subsection (a), the Secretary shall—

''(1) review the recommendations for action contained in the report;

''(2) determine which recommendations the Secretary approves for implementation and which recommendations the Secretary disapproves; and

''(3) submit to Congress a report that—

''(A) identifies the approved recommendations and the disapproved recommendations; and

''(B) explains the reasons for each such approval and disapproval.

''(c) COMPREHENSIVE DOD POLICY.—(1) Based on the approved recommendations of the task force and such other factors as the Secretary considers appropriate, the Secretary shall develop a comprehensive Department of Defense policy for processing complaints of sexual harassment and discrimination involving members of the Armed Forces under the jurisdiction of the Secretary.

''(2) The Secretary shall issue policy guidance for the implementation of the comprehensive policy and shall require the Secretaries of the military departments to prescribe regulations to implement that policy not later than March 1, 1995.

''(3) The Secretary shall ensure that the policy is implemented uniformly by the military departments insofar as practicable.

''(4) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress a proposal for any legislation necessary to enhance the capability of the Department of Defense to address the issues of unlawful discrimination and sexual harassment.

''(d) MILITARY DEPARTMENT POLICIES.—(1) The Secretary of the Navy and the Secretary of the Air Force shall review and revise the regulations of the Department of the Navy and the Department of the Air Force, respectively, relating to equal opportunity policy and procedures in that Department for the making of, and responding to, complaints of unlawful discrimination and sexual harassment in order to ensure that those regulations are substantially equivalent to the regulations of the Department of the Army on such matters.

''(2) In revising regulations pursuant to paragraph (1), the Secretary of the Navy and the Secretary of the Air Force may make such additions and modifications as the Secretary of Defense determines appropriate to strengthen those regulations beyond the substantial equivalent of the Army regulations in accordance with—

''(A) the approved recommendations of the Department of Defense Task Force on Discrimination and Sexual Harassment; and

''(B) the experience of the Army, Navy, Air Force, and Marine Corps regarding equal opportunity cases.

''(3) The Secretary of the Army shall review the regulations of the Department of the Army relating to equal opportunity policy and complaint procedures and revise the regulations as the Secretary of Defense considers appropriate to strengthen the regulations in accordance with the recommendations and experience described in subparagraphs (A) and (B) of paragraph (2).

''(e) REPORT OF ADVISORY BOARD.—(1) The Secretary of Defense shall direct the Advisory Board on the Investigative Capability of the Department of Defense, established by the Secretary of Defense in November 1993, to include in its report to the Secretary (scheduled to be transmitted to the Secretary during December 1994)—

''(A) the recommendations of the Advisory Board as to whether the current Department of Defense organizational structure is adequate to oversee all investigative matters related to unlawful discrimination, sexual harassment, and other misconduct related to the gender of the victim; and

''(B) recommendations as to whether additional data collection and reporting procedures are needed to enhance the ability of the Department of Defense to respond to unlawful discrimination, sexual harassment, and other misconduct related to the gender of the victim.

''(2) The Secretary shall transmit to Congress the report of the Advisory Board not later than 15 days after receiving the report.

''(f) PERFORMANCE EVALUATION STANDARDS FOR MEMBERS OF THE ARMED FORCES.—The Secretary of Defense shall ensure that Department of Defense regulations governing consideration of equal opportunity matters in evaluations of the performance of members of the Armed Forces include provisions requiring as a factor in such evaluations consideration of a member's commitment to elimination of unlawful discrimination or of sexual harassment in the Armed Forces.''

ANNUAL REPORT ON PERSONNEL READINESS FACTORS BY RACE AND GENDER

Section 533 of Pub. L. 103–337 provided that:

''(a) REQUIRED ASSESSMENT.—The Secretary of Defense shall submit to Congress an annual report on trends in recruiting, retention, and personnel readiness.

''(b) DATA TO BE COLLECTED.—Each annual report under subsection (a) shall include the following information with respect to the preceding fiscal year for the active components of each of the Armed Forces under the jurisdiction of the Secretary (as well as such additional information as the Secretary considers appropriate):

''(1) The numbers of members of the Armed Forces temporarily and permanently nondeployable and rates of temporary and permanent nondeployability, displayed by cause of nondeployability, rank, and gender.

''(2) The numbers and rates of complaints and allegations within the Armed Forces that involve gender and other unlawful discrimination and sexual harassment, and the rates of substantiation for those complaints and allegations.

''(3) The numbers and rates of disciplinary proceedings, displayed (A) by offense or infraction committed, (B) by gender, rank, and race, and (C) by the categories specified in paragraph (2).

''(4) The retention rates, by gender, rank, and race, with an analysis of factors influencing those rates.

''(5) The propensity of persons to enlist, displayed by gender and race, with an analysis of the factors influencing those propensities.

''(c) SUBMISSION TO CONGRESS.—The Secretary shall submit the report under this section for any fiscal year as part of the annual Department of Defense posture statement provided to Congress in connection with the Department of Defense budget request for that fiscal year.

''(d) INITIAL SUBMISSION.—The first report under this section shall be submitted in connection with the Department of Defense budget request for fiscal year 1996 and shall include data, to the degree such data already exists, for fiscal years after fiscal year 1991.''

VICTIMS' ADVOCATES PROGRAMS IN DEPARTMENT OF DEFENSE

Section 534 of Pub. L. 103–337 provided that:

''(a) ESTABLISHMENT.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness, shall revise policies and regulations of the Department of Defense with respect to the programs of the Department of Defense specified in paragraph (2) in order to establish within each of the military departments a victims' advocates program.

''(2) Programs referred to in paragraph (1) are the following:

''(A) Victim and witness assistance programs.

''(B) Family advocacy programs.

''(C) Equal opportunity programs.

''(3) In the case of the Department of the Navy, separate victims' advocates programs shall be established for the Navy and the Marine Corps.

''(b) PURPOSE.—A victims' advocates program established pursuant to subsection (a) shall provide assistance described in subsection (d) to members of the Armed Forces and their dependents who are victims of any of the following:

''(1) Crime.

''(2) Intrafamilial sexual, physical, or emotional abuse.

''(3) Discrimination or harassment based on race, gender, ethnic background, national origin, or religion.

''(c) INTERDISCIPLINARY COUNCILS.—(1) The Secretary of Defense shall establish a Department of Defense council to coordinate and oversee the implementation of programs under subsection (a). The membership of the council shall be selected from members of the Armed Forces and officers and employees of the Department of Defense having expertise or experience in a variety of disciplines and professions in order to ensure representation of the full range of services and expertise that will be needed in implementing those programs.

''(2) The Secretary of each military department shall establish similar interdisciplinary councils within that military department as appropriate to ensure the fullest coordination and effectiveness of the victims' advocates program of that military department. To the extent practicable, such a council shall be established at each significant military installation.

''(d) ASSISTANCE.—(1) Under a victims' advocates program established under subsection (a), individuals working in the program shall principally serve the interests of a victim by initiating action to provide (A) information on available benefits and services, (B) assistance in obtaining those benefits and services, and (C) other appropriate assistance.

''(2) Services under such a program in the case of an individual who is a victim of family violence (including intrafamilial sexual, physical, and emotional abuse) shall be provided principally through the family advocacy programs of the military departments.

''(e) STAFFING.—The Secretary of Defense shall provide for the assignment of personnel (military or civilian) on a full-time basis to victims' advocates programs established pursuant to subsection (a). The Secretary shall ensure that sufficient numbers of such full-time personnel are assigned to those programs to enable those programs to be carried out effectively.

''(f) IMPLEMENTATION DEADLINE.—Subsection (a) shall be carried out not later than six months after the date of the enactment of this Act [Oct. 5, 1994].

''(g) IMPLEMENTATION REPORT.—Not later than 30 days after the date on which Department of Defense policies and regulations are revised pursuant to subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on the implementation (and plans for implementation) of this section.''

ASSISTANCE TO FAMILY MEMBERS OF KOREAN CONFLICT AND COLD WAR POW/MIAS WHO REMAIN UNACCOUNTED FOR

Section 1031 of Pub. L. 103–337 provided that:

''(a) SINGLE POINT OF CONTACT.—The Secretary of Defense shall designate an official of the Department of Defense to serve as a single point of contact within the department—

''(1) for the immediate family members (or their designees) of any unaccounted-for Korean conflict POW/MIA; and

''(2) for the immediate family members (or their designees) of any unaccounted-for Cold War POW/MIA.

''(b) FUNCTIONS.—The official designated under subsection (a) shall serve as a liaison between the family members of unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs and the Department of Defense and other Federal departments and agencies that may hold information that may relate to such POW/MIAs. The functions of that official shall include assisting family members—

''(1) with the procedures the family members may follow in their search for information about the unaccounted-for Korean conflict POW/MIA or unaccounted-for Cold War POW/MIA, as the case may be;

''(2) in learning where they may locate information about the unaccounted-for POW/MIA; and

''(3) in learning how and where to identify classified records that contain pertinent information and that will be declassified.

''(c) ASSISTANCE IN OBTAINING DECLASSIFICATION.—The official designated under subsection (a) shall seek to obtain the rapid declassification of any relevant classified records that are identified.

''(d) REPOSITORY.—The official designated under subsection (a) shall provide all documents relating to unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs that are located as a result of the official's efforts to the National Archives and Records Administration, which shall locate them in a centralized repository.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'unaccounted-for Korean conflict POW/MIA' means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the Korean conflict, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

''(2) The term 'unaccounted-for Cold War POW/MIA' means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the period from September 2, 1945, to August 21, 1991, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

''(3) The term 'Korean conflict' has the meaning given such term in section 101(9) of title 38, United States Code.''

PLAN REQUIRING DISBURSING OFFICIALS OF DEPARTMENT OF DEFENSE TO MATCH DISBURSEMENTS TO PARTICULAR OBLIGATIONS

Pub. L. 103–335, title VIII, § 8137, Sept. 30, 1994, 108 Stat. 2654, provided that:

''(a)(1) The Secretary of Defense shall develop a plan for establishing and implementing a requirement for disbursing officials of the Department of Defense to match disbursements to particular obligations before making the disbursements. The Secretary shall transmit the plan to Congress not later than March 1, 1995.

''(2) The Inspector General of the Department of Defense shall review the plan and submit the Inspector General's independent assessment of the plan to the congressional defense committees.

''(b)(1) Not later than July 1, 1995, the Secretary of Defense shall require that each disbursement by the Department of Defense in an amount in excess of $5,000,000 be matched to a particular obligation before the disbursement is made.

''(2) Not later than October 1, 1995, the Secretary of Defense shall require that each disbursement by the Department of Defense in an amount in excess of $1,000,000 be matched to a particular obligation before the disbursement is made.

''(c) The Secretary shall ensure that a disbursement in excess of the threshold amount applicable under subsection (b) is not divided into multiple disbursements of less than that amount for the purpose of avoiding the applicability of such subsection to that disbursement.

''(d) The Secretary of Defense may waive a requirement for advance matching of a disbursement of the Department of Defense with a particular obligation in the case of (1) a disbursement involving deployed forces, (2) a disbursement for an operation in a war declared by Congress or a national emergency declared by the President or Congress, or (3) a disbursement under any other circumstances for which the waiver is necessary in the national security interests of the United States, as determined by the Secretary and certified by the Secretary to the congressional defense committees.

''(e) This section shall not be construed to limit the authority of the Secretary of Defense to require that a disbursement not in excess of the amount applicable under subsection (b) be matched to a particular obligation before the disbursement is made.''

NOTICE TO CONGRESS OF PROPOSED CHANGES IN COMBAT ASSIGNMENTS TO WHICH FEMALE MEMBERS MAY BE ASSIGNED

Pub. L. 103–160, div. A, title V, §542, Nov. 30, 1993, 107 Stat. 1659, provided that:

''(a) IN GENERAL.—(1) Except in a case covered by subsection (b), whenever the Secretary of Defense proposes to change military personnel policies in order to make available to female members of the Armed Forces assignment to any type of combat unit, class of combat vessel, or type of combat platform that is not open to such assignments, the Secretary shall, not less than 30 days before such change is implemented, transmit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] notice of the proposed change in personnel policy.

''(2) If before the date of the enactment of this Act [Nov. 30, 1993] the Secretary made any change to military personnel policies in order to make available to female members of the Armed Forces assignment to any type of combat unit, class of combat vessel, or type of combat platform that was not previously open to such assignments, the Secretary shall, not later than 30 days after the date of the enactment of this Act, transmit to the Committees on Armed Services of the Senate and House of Representatives notice of that change in personnel policy.

''(b) SPECIAL RULE FOR GROUND COMBAT EXCLUSION POLICY.—(1) If the Secretary of Defense proposes to make any change described in paragraph (2) to the ground combat exclusion policy, the Secretary shall, not less than 90 days before any such change is implemented, submit to Congress a report providing notice of the proposed change.

''(2) A change referred to in paragraph (1) is a change that either—

''(A) closes to female members of the Armed Forces any category of unit or position that at that time is open to service by such members; or

''(B) opens to service by such members any category of unit or position that at that time is closed to service by such members.

''(3) The Secretary shall include in any report under paragraph (1)—

''(A) a detailed description of, and justification for, the proposed change to the ground combat exclusion policy; and

''(B) a detailed analysis of legal implication of the proposed change with respect to the constitutionality of the application of the Military Selective Service Act [50 App. U.S.C. 451 et seq.] to males only.

''(4) For purposes of this subsection, the term 'ground combat exclusion policy' means the military personnel policies of the Department of Defense and the military departments, as in effect on January 1, 1993, by which female members of the Armed Forces are restricted from assignment to units and positions whose mission requires routine engagement in direct combat on the ground.''

GENDER-NEUTRAL OCCUPATIONAL PERFORMANCE STANDARDS

Pub. L. 103–160, div. A, title V, §543, Nov. 30, 1993, 107 Stat. 1660, provided that:

''(a) GENDER NEUTRALITY REQUIREMENT.—In the case of any military occupational career field that is open to both male and female members of the Armed Forces, the Secretary of Defense—

''(1) shall ensure that qualification of members of the Armed Forces for, and continuance of members of the Armed Forces in, that occupational career field is evaluated on the basis of common, relevant performance standards, without differential standards or evaluation on the basis of gender;

''(2) may not use any gender quota, goal, or ceiling except as specifically authorized by law; and

''(3) may not change an occupational performance standard for the purpose of increasing or decreasing the number of women in that occupational career field.

''(b) REQUIREMENTS RELATING TO USE OF SPECIFIC PHYSICAL REQUIREMENTS.—(1) For any military occupational specialty for which the Secretary of Defense determines that specific physical requirements for muscular strength and endurance and cardiovascular capacity are essential to the performance of duties, the Secretary shall prescribe specific physical requirements for members in that specialty and shall ensure (in the case of an occupational specialty that is open to both male and female members of the Armed Forces) that those requirements are applied on a gender-neutral basis.

''(2) Whenever the Secretary establishes or revises a physical requirement for an occupational specialty, a member serving in that occupational specialty when the new requirement becomes effective, who is otherwise considered to be a satisfactory performer, shall be provided a reasonable period, as determined under regulations prescribed by the Secretary, to meet the standard established by the new requirement. During that period, the new physical requirement may not be used to disqualify the member from continued service in that specialty.

''(c) NOTICE TO CONGRESS OF CHANGES.—Whenever the Secretary of Defense proposes to implement changes to the occupational standards for a military occupational field that are expected to result in an increase, or in a decrease, of at least 10 percent in the number of female members of the Armed Forces who enter, or are assigned to, that occupational field, the Secretary of Defense shall submit to Congress a report providing notice of the change and the justification and rationale for the change. Such changes may then be implemented only after the end of the 60-day period beginning on the date on which such report is submitted.''

FOREIGN LANGUAGE PROFICIENCY TEST PROGRAM

Pub. L. 103–160, div. A, title V, §575, Nov. 30, 1993, 107 Stat. 1675, provided that:

''(a) TEST PROGRAM.—The Secretary of Defense shall develop and carry out a test program for improving foreign language proficiency in the Department of Defense through improved management and other measures. The test program shall be designed to evaluate the findings and recommendations of—

''(1) the June 1993 inspection report of the Inspector General of the Department of Defense on the Defense Foreign Language Program (report numbered 93–INS–10);

''(2) the report of the Sixth Quadrennial Review of Military Compensation (August 1988); and

''(3) any other recent study of the foreign language proficiency program of the Department of Defense.

''(b) EVALUATION OF PRIOR RECOMMENDATIONS.—The test program shall include an evaluation of the following possible changes to current practice identified in the reports referred to in subsection (a):

''(1) Management of linguist billets and personnel for the active and reserve components from a Total Force perspective.

''(2) Improvement of linguist training programs, both resident and nonresident, to provide greater flexibility, to accommodate missions other than signals intelligence, and to improve the provision of resources for nonresident programs.

''(3) Centralized responsibility within the Office of the Secretary of Defense to provide coordinated oversight of all foreign language issues and programs, including a centralized process for determination, validation, and documentation of foreign language requirements for different services and missions.

''(4) Revised policies of each of the military departments to foster maintenance of highly perishable linguistic skills through improved management of the careers of language-trained personnel, including more effective use of language skills, improved career opportunities within the linguistics field, and specific linkage of language proficiency to promotions.

''(5) In the case of language-trained members of the reserve components—

''(A) the use of additional training assemblies (ATAs) as a means of sustaining linguistic proficiency and enhancing retention; and

''(B) the use of larger enlistment and reenlistment bonuses, Special Duty Assignment Pay, and educational incentives.

''(6) Such other management changes as the Secretary may consider necessary.

''(c) EVALUATION OF ADJUSTMENT IN FOREIGN LANGUAGE PROFICIENCY PAY.—(1) The Secretary shall include in the test program an evaluation of adjustments in foreign language proficiency pay for active and reserve component personnel (which may be adjusted for purposes of the test program without regard to section 316(b) of title 37, United States Code).

''(2) Before any adjustment in foreign language proficiency pay is included in the test program as authorized by paragraph (1), the Secretary shall submit to the committees named in subsection (d)(2) the following information related to proficiency pay adjustments:

''(A) The response of the Secretary to the findings of the Inspector General in the report on the Defense Foreign Language Program referred to in subsection (a)(1), specifically including the following matters raised in that report:

''(i) Inadequate centralized oversight of planning, policy, roles, responsibilities, and funding for foreign language programs.

''(ii) Inadequate management and validation of the requirements process for foreign language programs.

''(iii) Inadequate uniform career management of language-trained personnel, including failure to take sufficient advantage of language skills and to recoup investment of training dollars.

''(iv) Inadequate training programs, both resident and nonresident.

''(B) The current manning of linguistic billets (shown by service, by active or reserve component, and by career field).

''(C) The rates of retention in the service for language-trained personnel (shown by service, by active or reserve component, and by career field).

''(D) The rates of retention by career field for language-trained personnel (shown by service and by active or reserve component).

''(E) The rates of language proficiency for personnel serving in linguistic billets (shown by service, by active or reserve component, and by career field).

''(F) Trends in performance ratings for personnel serving in linguistic billets (shown by service, by active or reserve component, and by career field).

''(G) Promotion rates for personnel serving in linguistic billets (shown by service, by active or reserve component, and by career field).

''(H) The estimated cost of foreign language proficiency pay as proposed to be paid at the adjusted rates for the test program under paragraph (1)—

''(i) for each year of the test program; and

''(ii) for five years, if those rates are subsequently applied to the entire Department of Defense.

''(3) The rates for adjusted foreign language proficiency pay as proposed to be paid for the test program under paragraph (1) may not take effect for the test program unless the senior official responsible for personnel matters in the Office of the Secretary of Defense determines that—

''(A) the foreign language proficiency pay levels established for the test program are consistent with proficiency pay levels for other functions throughout the Department of Defense; and

''(B) the terms and conditions for receiving foreign language proficiency pay conform to current policies and practices within the Department of Defense.

''(d) REPORT ON PLAN FOR TEST PROGRAM.—(1) The Secretary of Defense shall submit to the committees named in paragraph (2) a report containing a plan for the test program required in subsection (a), an explanation of the plan, and a discussion of the matters stated in subsection (c)(2). The report shall be submitted not later than April 1, 1994.

''(2) The committees referred to in paragraph (1) are—

''(A) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives; and

''(B) the Committee on Armed Services and the Select Committee on Intelligence of the Senate.

''(e) PERIOD OF TEST PROGRAM.—(1) The test program required by subsection (a) shall begin on October 1, 1994. However, if the report required by subsection (d) is not submitted by the date specified in that subsection for the submission of the report, the test program shall begin at the end of a period of 180 days (as computed under paragraph (2)) beginning on the date on which such report is submitted.

''(2) For purposes of paragraph (1), days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment sine die shall be excluded in the computation of such 180-day period.

''(3) The test program shall terminate two years after it begins.''

SECURITY CLEARANCES

Section 1041 of Pub. L. 103–337 provided that:

''(a) IN GENERAL.—The Secretary of Defense shall submit to Congress, not later than 90 days after the close of each of fiscal years 1995 through 2000, a report concerning the denial, revocation, or suspension of security clearances for Department of Defense military and civilian personnel, and for Department of Defense contractor employees, for that fiscal year.

''(b) MATTER TO BE INCLUDED IN REPORT.—The Secretary shall include in each such report the following information with respect to the fiscal year covered by the report (shown separately for members of the Armed Forces, civilian officers and employees of the Department of Defense, and employees of contractors of the Department of Defense):

''(1) The number of denials, revocations, and suspensions of a security clearance, including clearance for special access programs and for sensitive compartmented information.

''(2) For cases involving the denial or revocation of a security clearance, the average period from the date of the initial determination and notification to the individual concerned of the denial or revocation of the clearance to the date of the final determination of the denial or revocation, as well as the shortest and longest period in such cases.

''(3) For cases involving the suspension of a security clearance, the average period from the date of the initial determination and notification to the individual concerned of the suspension of the clearance to the date of the final determination of the suspension, as well as the shortest and longest period of such cases.

''(4) The number of cases in which a security clearance was suspended in which the resolution of the matter was the restoration of the security clearance, and the average period for such suspensions.

''(5) The number of cases (shown only for members of the Armed Forces and civilian officers and employees of the Department of Defense) in which an individual who had a security clearance denied or revoked remained a member of the Armed Forces or a civilian officer or employee, as the case may be, at the end of the fiscal year.

''(6) The number of cases in which an individual who had a security clearance suspended, and in which no final determination had been made, remained a member of the Armed Forces, a civilian officer or employee, or an employee of a contractor, as the case may be, at the end of the fiscal year.

''(7) The number of cases in which an appeal was made from a final determination to deny or revoke a security clearance and, of those, the number in which the appeal resulted in the granting or restoration of the security clearance.''

Pub. L. 103–160, div. A, title XI, §1183, Nov. 30, 1993, 107 Stat. 1774, provided that:

''(a) REVIEW OF SECURITY CLEARANCE PROCEDURES.—(1) The Secretary of Defense shall conduct a review of the procedural safeguards available to Department of Defense civilian employees who are facing denial or revocation of security clearances.

''(2) Such review shall specifically consider—

''(A) whether the procedural rights provided to Department of Defense civilian employees should be enhanced to include the procedural rights available to Department of Defense contractor employees;

''(B) whether the procedural rights provided to Department of Defense civilian employees should be enhanced to include the procedural rights available to similarly situated employees in those Government agencies that provide greater rights than the Department of Defense; and

''(C) whether there should be a difference between the rights provided to both Department of Defense civilian and contractor employees with respect to security clearances and the rights provided with respect to sensitive compartmented information and special access programs.

''(b) REPORT.—The Secretary shall submit to Congress a report on the results of the review required by subsection (a) not later than March 1, 1994.

''(c) REGULATIONS.—The Secretary shall revise the regulations governing security clearance procedures for Department of Defense civilian employees not later than May 15, 1994.''

INVESTIGATIONS OF DEATHS OF MEMBERS OF ARMED FORCES FROM SELF-INFLICTED CAUSES

Pub. L. 103–160, div. A, title XI, §1185, Nov. 30, 1993, 107 Stat. 1774, provided that:

''(a) SECRETARY OF DEFENSE TO REVIEW DEATH INVESTIGATION PROCEDURES.—(1) The Secretary of Defense shall review the procedures of the military departments for investigating deaths of members of the Armed Forces that may have resulted from self-inflicted causes. The Secretary shall complete the review not later than June 30, 1994.

''(2) Not later than July 15, 1994, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of such review. The report may include any recommendations for legislation that the Secretary considers appropriate.

''(3) Not later than October 1, 1994, the Secretary shall prescribe regulations governing the investigation of deaths of members of the Armed Forces that may have resulted from self-inflicted causes. The regulations shall include a date by which the Secretaries of the military departments are required to implement the regulations.

''(b) INSPECTOR GENERAL TO REVIEW CERTAIN DEATH INVESTIGATIONS.—(1) Upon a request that meets the requirements of paragraph (3), the Inspector General of the Department of Defense shall review each investigation conducted by a Department of Defense investigative organization of the death of a member of the Armed Forces who, while serving on active duty during the period described in paragraph (2), died from a cause determined to be self-inflicted.

''(2) The period referred to in paragraph (1) is the period that—

''(A) begins on January 1, 1982; and

''(B) ends on the date specified in the regulations prescribed under subsection (a)(3) as the deadline for the implementation of such regulations by the Secretaries of the military departments.

''(3) Any of the family members of a member of the Armed Forces referred to in paragraph (1) may request a review under paragraph (1). The request must be received by the Secretary of the military department concerned not later than one year after the date referred to in paragraph (2)(B) and shall contain or describe specific evidence of a material deficiency in the previous investigation.

''(4) If the Inspector General determines that a previous investigation of a death was deficient in a material respect, the Inspector General shall conduct any additional investigation that the Inspector General considers necessary to determine the cause of that death.

''(5) The Inspector General shall submit to the Secretary of the military department concerned a report on the results of each review conducted under paragraph (1) and each additional investigation conducted under paragraph (4) as a result of that review.

''(6) The Secretary of the military department concerned, consistent with other applicable law, shall take such corrective actions with regard to matters contained in the report as the Secretary considers appropriate.

''(7) To the same extent that fatality reports may be furnished to family members under section 1072 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2508; 10 U.S.C. 113 note), the Inspector General, after consultation with the Secretary of the military department concerned, shall provide a copy of the Inspector General's report on the review of a death investigation to each of the family members who requested the review.

''(c) DEFINITIONS.—In this section:

''(1) The term 'active duty' has the meaning given such term in section 101(d)(1) of title 10, United States Code.

''(2) The term 'family members' has the meaning given such term in section 1072(c)(2) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2510; 10 U.S.C. 133 note [set out below]).

''(d) APPLICABILITY TO COAST GUARD.—The Secretary of Transportation shall implement with respect to the Coast Guard the requirements that are imposed by this section on the Secretary of Defense and the Inspector General of the Department of Defense.''

PROGRAM TO COMMEMORATE WORLD WAR II

Pub. L. 102–484, div. A, title III, §378, Oct. 23, 1992, 106 Stat. 2387, as amended by Pub. L. 103–337, div. A, title III, §382(a), Oct. 5, 1994, 108 Stat. 2740, provided that:

''(a) IN GENERAL.—The Secretary of Defense may, during fiscal years 1993 through 1996, conduct a program to commemorate the 50th anniversary of World War II and to coordinate, support, and facilitate other such commemoration programs and activities of the Federal Government, State and local governments, and other persons.

''(b) USE OF FUNDS.—During fiscal years 1993 through 1996, funds appropriated to the Department of Defense for operation and maintenance of Defense Agencies shall be available to conduct the program referred to in subsection (a).

''(c) PROGRAM ACTIVITIES.—The program referred to in subsection (a) may include activities and ceremonies—

''(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of World War II;

''(2) to thank and honor veterans of World War II and their families;

''(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States;

''(4) to foster an awareness in the people of the United States that World War II was the central event of the 20th century that defined the postwar world;

''(5) to highlight advances in technology, science, and medicine related to military research conducted during World War II;

''(6) to inform wartime and postwar generations of the contributions of the Armed Forces of the United States to the United States;

''(7) to recognize the contributions and sacrifices made by World War II allies of the United States; and

''(8) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

''(d) AUTHORITY OF THE SECRETARY.—(1) In connection with the program referred to in subsection (a), the Secretary of Defense may adopt, use, and register as trademarks and service marks, emblems, signs, insignia, or words. The Secretary shall have the exclusive right to use such emblems, signs, insignia or words, subject to the preexisting rights described in paragraph (3), and may grant exclusive or nonexclusive licenses in connection therewith.

''(2) Without the consent of the Secretary of Defense, any person who uses any emblem, sign, insignia, or word adopted, used, or registered as a trademark or service mark by the Secretary in accordance with paragraph (1), or any combination or simulation thereof tending to cause confusion, to cause mistake, to deceive, or to falsely suggest a connection with the program referred to in subsection (a), shall be subject to suit in a civil action by the Attorney General, upon complaint by the Secretary of Defense, for the remedies provided in the Act of July 5, 1946, as amended (60 Stat. 427; popularly known as the Trademark Act of 1945 [1946]) (15 U.S.C. 1051 et seq.).

''(3) Any person who actually used an emblem, sign, insignia, or word adopted, used, or registered as a trademark or service mark by the Secretary in accordance with paragraph (1), or any combination or simulation thereof, for any lawful purpose before such adoption, use, or registration as a trademark or service mark by the Secretary shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

''(e) ESTABLISHMENT OF ACCOUNT.—(1) There is established in the Treasury of the United States an account to be known as the 'Department of Defense 50th Anniversary of World War II Commemoration Account' which shall be administered by the Secretary of Defense as a single account. There shall be deposited into the account all proceeds derived from activities described in subsection (d).

''(2) The Secretary may use the funds in the account established in paragraph (1) only for the purpose of conducting the program referred to in subsection (a).

''(3) Not later than 60 days after the termination of the authority of the Secretary to conduct the commemoration program referred to in subsection (a), the Secretary shall transmit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report containing an accounting of all the funds deposited into and expended from the account or otherwise expended under this section, and of any amount remaining in the account. Unobligated funds which remain in the account after termination of the authority of the Secretary under this section shall be held in the account until transferred by law after the Committees receive the report.

''(f) PROVISION OF VOLUNTARY SERVICES.—(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary of Defense may accept from any person voluntary services to be provided in furtherance of the program referred to in subsection (a).

''(2) A person providing voluntary services under this subsection shall be considered to be an employee for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

''(3) The Secretary of Defense may provide for reimbursement of incidental expenses which are incurred by a person providing voluntary services under this subsection. The Secretary of Defense shall determine which expenses are eligible for reimbursement under this paragraph.''

REVIEW OF MILITARY FLIGHT TRAINING ACTIVITIES AT CIVILIAN AIRFIELDS

Pub. L. 102–484, div. A, title III, § 383, Oct. 23, 1992, 106 Stat. 2392, provided that:

''(a) REVIEW REQUIRED.—The Secretary of Defense shall provide for a review of the practices and procedures of the military departments regarding the use of civilian airfields in flight training activities of the Armed Forces.

''(b) PURPOSE.—The purpose of the review is to determine whether the practices and procedures referred to in subsection (a) should be modified to better protect the public safety while meeting training requirements of the Armed Forces.

''(c) SPECIAL REQUIREMENT.—In the conduct of the review, particular consideration shall be given to the practices and procedures regarding the use of civilian airfields in heavily populated areas.''

REPORT ON ACTIONS TO REDUCE DISINCENTIVES FOR DEPENDENTS TO REPORT ABUSE BY MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. A, title VI, § 653(d), Oct. 23, 1992, 106 Stat. 2429, provided that:

''(1) Not later than December 15, 1993, the Secretary of Defense shall transmit to the Congress a report on the actions taken and planned to be taken in the Department of Defense to reduce or eliminate disincentives for a dependent of a member of the Armed Forces abused by the member to report the abuse to appropriate authorities.

''(2) The actions considered by the Secretary should include the provision of treatment, child care services, health care services, job training, job placement services, and transitional financial assistance for dependents of members of the Armed Forces referred to in paragraph (1).''

SURVIVOR NOTIFICATION AND ACCESS TO REPORTS RELATING TO SERVICE MEMBERS WHO DIE

Pub. L. 102–484, div. A, title X, § 1072, Oct. 23, 1992, 106 Stat. 2508, provided that:

''(a) AVAILABILITY OF FATALITY REPORTS AND RECORDS.—

''(1) REQUIREMENT.—The Secretary of each military department shall ensure that fatality reports and records pertaining to any member of the Armed Forces who dies in the line of duty shall be made available to family members of the service member in accordance with this subsection.

''(2) INFORMATION TO BE PROVIDED AFTER NOTIFICATION OF DEATH.—Within a reasonable period of time after family members of a service member are notified of the member's death, but not more than 30 days after the date of notification, the Secretary concerned shall ensure that the family members—

''(A) in any case in which the cause or circumstances surrounding the death are under investigation, are informed of that fact, of the names of the agencies within the Department of Defense conducting the investigations, and of the existence of any reports by such agencies that have been or will be issued as a result of the investigations; and

''(B) are furnished, if the family members so desire, a copy of any completed investigative report and any other completed fatality reports that are available at the time family members are provided the information described in subparagraph (A) to the extent such reports may be furnished consistent with sections 552 and 552a of title 5, United States Code.

''(3) ASSISTANCE IN OBTAINING REPORTS.—(A) In any case in which an investigative report or other fatality reports are not available at the time family members of a service member are provided the information described in paragraph (2)(A) about the member's death, the Secretary concerned shall ensure that a copy of such investigative report and any other fatality reports are furnished to the family members, if they so desire, when the reports are completed and become available, to the extent such reports may be furnished consistent with sections 552 and 552a of title 5, United States Code.

''(B) In any case in which an investigative report or other fatality reports cannot be released at the time family members of a service member are provided the information described in paragraph (2)(A) about the member's death because of section 552 or 552a of title 5, United States Code, the Secretary concerned shall ensure that the family members—

''(i) are informed about the requirements and procedures necessary to request a copy of such reports; and

''(ii) are assisted, if the family members so desire, in submitting a request in accordance with such requirements and procedures.

''(C) The requirement of subparagraph (B) to inform and assist family members in obtaining copies of fatality reports shall continue until a copy of each report is obtained, or access to any such report is denied by competent authority within the Department of Defense.

''(4) WAIVER.—The requirements of paragraph (2) or (3) may be waived on a case-by-case basis, but only if the Secretary of the military department concerned determines that compliance with such requirements is not in the interests of national security.

''(b) REVIEW OF COMBAT FATALITY NOTIFICATION PROCEDURES.—

''(1) REVIEW.—The Secretary of Defense shall conduct a review of the fatality notification procedures used by the military departments. Such review shall examine the following matters:

''(A) Whether uniformity in combat fatality notification procedures among the military departments is desirable, particularly with respect to—

''(i) the use of one or two casualty notification and assistance officers;

''(ii) the use of standardized fatality report forms and witness statements;

''(iii) the use of a single center for all military departments through which combat fatality information may be processed; and

''(iv) the use of uniform procedures and the provision of a dispute resolution process for instances in which members of one of the Armed Forces inflict casualties on members of another of the Armed Forces.

''(B) Whether existing combat fatality report forms should be modified to include a block or blocks with which to identify the cause of death as 'friendly fire', 'U.S. ordnance', or 'unknown'.

''(C) Whether the existing 'Emergency Data' form prepared by members of the Armed Forces should be revised to allow members to specify provision for notification of additional family members in cases such as the case of a divorced service member who leaves children with both a current and a former spouse.

''(D) Whether the military departments should, in all cases, provide family members of a service member who died as a result of injuries sustained in combat with full and complete details of the death of the service member, regardless of whether such details may be graphic, embarrassing to the family members, or reflect negatively on the military department concerned.

''(E) Whether, and when, the military departments should inform family members of a service member who died as a result of injuries sustained in combat about the possibility that the death may have been the result of friendly fire.

''(F) The criteria and standards which the military departments should use in deciding when disclosure is appropriate to family members of a member of the military forces of an allied nation who died as a result of injuries sustained in combat when the death may have been the result of fire from United States armed forces and an investigation into the cause or circumstances of the death has been conducted.

''(2) REPORT.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the review conducted under paragraph (1). Such report shall be submitted not later than March 31, 1993, and shall include recommendations on the matters examined in the review and on any other matters the Secretary determines to be appropriate based upon the review or on any other reviews undertaken by the Department of Defense.

''(c) DEFINITIONS.—In this section:

''(1) The term 'fatality reports' includes investigative reports and any other reports pertaining to the cause or circumstances of death of a member of the Armed Forces in the line of duty (such as autopsy reports, battlefield reports, and medical reports).

''(2) The term 'family members' means parents, spouses, adult children, and such other relatives as the Secretary concerned considers appropriate.

''(d) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies with respect to deaths of members of the Armed Forces occurring after the date of the enactment of this Act [Oct. 23, 1992].

''(2) With respect to deaths of members of the Armed Forces occurring before the date of the enactment of this Act, the Secretary concerned shall provide fatality reports to family members upon request as promptly as practicable.''

LIMITATION ON SUPPORT FOR UNITED STATES CONTRACTORS SELLING ARMS OVERSEAS

Pub. L. 102–484, div. A, title X, §1082, Oct. 23, 1992, 106 Stat. 2516, provided that:

''(a) SUPPORT FOR CONTRACTORS.—In the event that a United States defense contractor or industrial association requests the Department of Defense or a military department to provide support in the form of military equipment for any airshow or trade exhibition to be held outside the United States, such equipment may not be supplied unless the contractor or association agrees to reimburse the Treasury of the United States for—

''(1) all incremental costs of military personnel accompanying the equipment, including food, lodging, and local transportation;

''(2) all incremental transportation costs incurred in moving such equipment from its normally assigned location to the airshow or trade exhibition and return; and

''(3) any other miscellaneous incremental costs not included under paragraphs (1) and (2) that are incurred by the Federal Government but would not have been incurred had military support not been provided to the contractor or industrial association.

''(b) DEPARTMENT OF DEFENSE EXHIBITIONS.—(1) A military department may not participate directly in any airshow or trade exhibition held outside the United States unless the Secretary of Defense—

''(A) determines that it is in the national security interests of the United States for the military department to do so; and

''(B) provides to the congressional defense committees at least 45 days before the opening of the airshow or trade exhibition a report detailing—

''(i) why the show or exhibition is in the national security interest;

''(ii) a description of the implications that promoting the sale of the weapons in question will have on arms control; and

''(iii) an estimate of any costs to be incurred.

''(2) The Secretary of Defense may not delegate the authority to make the determination referred to in paragraph (1)(A) below the level of the Under Secretary of Defense for Policy.

''(c) DEFINITION.—In this section, the term 'incremental transportation cost' includes the cost of transporting equipment to an airshow or trade exhibition only to the extent that the provision of transportation by the Department of Defense described in subsection (a)(2) does not fulfill legitimate training requirements that would otherwise have to be met.''

OVERSEAS MILITARY END STRENGTH

Pub. L. 102–484, div. A, title XIII, § 1302, Oct. 23, 1992, 106 Stat. 2545, which provided that on and after Sept. 30, 1996, no appropriated funds may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in nations outside the United States at any level in excess of 60 percent of the end strength level of such members on Sept. 30, 1992, with exceptions in the event of declarations of war or emergency, was repealed and restated as section 123b of this title by Pub. L. 103–337, § 1312(a), (c).

REPORTS ON OVERSEAS BASING

Pub. L. 102–484, div. A, title XIII, § 1304, Oct. 23, 1992, 106 Stat. 2546, as amended by Pub. L. 103–160, div. B, title XXIX, § 2924(a), Nov. 30, 1993, 107 Stat. 1931, provided that:

''(a) ANNUAL REPORT.—The Secretary of Defense shall, not later than March 31 of each year through 1997, submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives], either separately or as part of another relevant report, a report that specifies—

''(1) the stationing and basing plan by installation for United States military forces outside the United States;

''(2) the status of closures of United States military installations located outside the United States;

''(3) both—

''(A) the status of negotiations, if any, between the United States and the host government as to (i) United States claims for compensation for the fair market value of the improvements made by the United States at each installation referred to in paragraph (2), and (ii) any claims of the host government for damages or restoration of the installation; and

''(B) the representative of the United States in any such negotiations;

''(4) the potential savings to the United States resulting from such closures;

''(5) the cost to the United States of any improvements made at each installation referred to in paragraph (2) and the fair market value of such improvements, expressed in constant dollars based on the date of completion of the improvements;

''(6) in each case in which negotiations between the United States and a host government have resulted in an agreement for the payment to the United States by the host government of the value of improvements to an installation made by the United States, the amount of such payment, the form of such payment, and the expected date of such payment; and

''(7) efforts and progress toward achieving host nation offsets under section 1301(e) [106 Stat. 2545] and reduced end strength levels under section 1302 [set out above].

''(b) REPORT ON BUDGET IMPLICATIONS OF OVERSEAS BASING AGREEMENTS.—Whenever the Secretary of Defense enters into a basing agreement between the United States and a foreign country with respect to United States military forces outside the United States, the Secretary of Defense shall, in advance of the signing of the agreement, submit to the congressional defense committees a report on the Federal budget implications of the agreement.''

COMMISSION ON ASSIGNMENT OF WOMEN IN ARMED FORCES

Sections 541–550 of Pub. L. 102–190 provided for the creation of a Commission on the Assignment of Women in the Armed Forces to assess the laws and policies restricting the assignment of female service members and the implications, if any, for the combat readiness of the Armed Forces of permitting female members to qualify for assignment to positions in some or all categories of combat positions, with a report to be submitted to the President no later than Nov. 15, 1992, and to the Congress no later than Dec. 15, 1992, containing recommendations as to what roles female members should have in combat and what laws and policies restricting such assignments should be repealed or modified, and further provided for powers and procedures of the Commission, personnel matters, payment of Commission expenses and other miscellaneous administrative provisions, termination of the Commission 90 days after submission of its final report, and test assignments of female service members to combat positions.

REQUIREMENTS RELATING TO EUROPEAN MILITARY PROCUREMENT PRACTICES

Section 832 of Pub. L. 102–190 provided that:

''(a) EUROPEAN PROCUREMENT PRACTICES.—The Secretary of Defense shall—

''(1) compute the total value of American-made military goods and services procured each year by European governments or companies;

''(2) review defense procurement practices of European governments to determine what factors are considered in the selection of contractors and to determine whether American firms are discriminated against in the selection of contractors for purchases by such governments of military goods and services; and

''(3) establish a procedure for discussion with European governments about defense contract awards made by them that American firms believe were awarded unfairly.

''(b) DEFENSE TRADE AND COOPERATION WORKING GROUP.—The Secretary of Defense shall establish a defense trade and cooperation working group. The purpose of the group is to evaluate the impact of, and formulate United States positions on, European initiatives that affect United States defense trade, cooperation, and technology security. In carrying out the responsibilities of the working group, members of the group shall consult, as appropriate, with personnel in the Departments of State and Commerce and in the Office of the United States Trade Representative.

''(c) GAO REVIEW.—The Comptroller General shall conduct a review to determine how the members of the North Atlantic Treaty Organization are implementing their bilateral reciprocal defense procurement memoranda of understanding with the United States. The Comptroller General shall complete the review, and submit to Congress a report on the results of the review, not later than February 1, 1992.''

DEPARTMENT OF DEFENSE USE OF NATIONAL INTELLIGENCE COLLECTION SYSTEMS

Section 924 of Pub. L. 102–190 provided that:

''(a) PROCEDURES FOR USE.—The Secretary of Defense, after consultation with the Director of Central Intelligence, shall prescribe procedures for regularly and periodically exercising national intelligence collection systems and exploitation organizations that would be used to provide intelligence support, including support of the combatant commands, during a war or threat to national security.

''(b) USE IN JOINT TRAINING EXERCISES.—In accordance with procedures prescribed under subsection (a), the Chairman of the Joint Chiefs of Staff shall provide for the use of the national intelligence collection systems and exploitation organizations in joint training exercises to the extent necessary to ensure that those systems and organizations are capable of providing intelligence support, including support of the combatant commands, during a war or threat to national security.

''(c) REPORT.—Not later than May 1, 1992, the Secretary of Defense and the Director of Central Intelligence shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a joint report—

''(1) describing the procedures prescribed under subsection (a); and

''(2) stating the assessment of the Chairman of the Joint Chiefs of Staff of the performance in joint training exercises of the national intelligence collection systems and the Chairman's recommendations for any changes that the Chairman considers appropriate to improve that performance.''

FAMILY SUPPORT CENTER FOR FAMILIES OF PRISONERS OF WAR AND PERSONS MISSING IN ACTION

Section 1083 of Pub. L. 102–190 provided that:

''(a) REQUEST FOR ESTABLISHMENT.—The President is authorized and requested to establish in the Department of Defense a family support center to provide information and assistance to members of the families of persons who at any time while members of the Armed Forces were classified as prisoners of war or missing in action in Southeast Asia and who have not been accounted for. Such a support center should be located in a facility in the National Capital region.

''(b) DUTIES.—The center should be organized and provided with such personnel as necessary to permit the center to assist family members referred to in subsection (a) in contacting the departments and agencies of the Federal Government having jurisdiction over matters relating to such persons.''

REPORTS ON FOREIGN CONTRIBUTIONS AND COSTS OF OPERATION DESERT STORM

Pub. L. 102–25, title IV, Apr. 6, 1991, 105 Stat. 99, directed Director of Office of Management and Budget to submit to Congress a number of reports on incremental costs associated with Operation Desert Storm and amounts of contributions made to United States by foreign countries to offset those costs, with a final report due not later than Nov. 15, 1992, and directed Secretary of State and Secretary of the Treasury to jointly submit to Congress a number of reports on contributions made by foreign countries as part of international response to Persian Gulf crisis, with a final report due not later than Nov. 15, 1992.

CHILD CARE ASSISTANCE TO FAMILIES OF MEMBERS SERVING ON ACTIVE DUTY DURING PERSIAN GULF CONFLICT

Pub. L. 102–25, title VI, §601, Apr. 6, 1991, 105 Stat. 105, as amended by Pub. L. 102–190, div. A, title X, §1063(d)(1), Dec. 5, 1991, 105 Stat. 1476; Pub. L. 102–484, div. A, title X, §1053(8), Oct. 23, 1992, 106 Stat. 2502, provided that:

''(a) IN GENERAL.—The Secretary of Defense may provide assistance for families of members of the Armed Forces and of members of the National Guard who served on active duty during the Persian Gulf conflict in order to ensure that the children of such families obtain needed child care services. The assistance authorized by this section should be directed primarily toward providing needed child care services for children of such personnel who are serving in the Persian Gulf area or who were otherwise deployed, assigned, or ordered to active duty in connection with Operation Desert Storm.

''(b) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated from the Defense Cooperation Account for fiscal year 1991 under section 101(a) [105 Stat. 78], $20,000,000 shall be available to carry out the provisions of this section. The costs of carrying out such provisions are incremental costs associated with Operation Desert Storm.

''(c) SUPPLEMENTATION OF OTHER PUBLIC FUNDS.—Funds appropriated pursuant to subsection (b) that are made available to carry out this section may be used only to supplement, and not to supplant, the amount of any other Federal, State, or local government funds otherwise expended or authorized for the support of child care programs for members of the Armed Forces.''

FAMILY EDUCATION AND SUPPORT SERVICES TO FAMILIES OF MEMBERS SERVING ON ACTIVE DUTY IN OPERATION DESERT STORM

Pub. L. 102–25, title VI, §602, Apr. 6, 1991, 105 Stat. 106, as amended by Pub. L. 102–190, div. A, title X, §1063(d)(2), Dec. 5, 1991, 105 Stat. 1476, provided that:

''(a) IN GENERAL.—The Secretary of Defense may provide assistance in accordance with this section to families of members of the Armed Forces and members of the National Guard who served on active duty during the Persian Gulf conflict in order to ensure that those families receive educational assistance and family support services necessary to meet needs arising out of Operation Desert Storm.

''(b) TYPES OF ASSISTANCE.—The assistance authorized by this section may be provided to families directly or through the awarding of grants, contracts, or other forms of financial assistance to appropriate private or public entities.

''(c) GEOGRAPHIC AREAS ASSISTED.—(1) Such assistance shall be provided primarily in geographic areas—

''(A) in which a substantial number of members of the active components of the Armed Forces of the United States are permanently assigned and from which a significant number of such members are being deployed, or have been deployed, in connection with Operation Desert Storm; or

''(B) from which a significant number of members of the reserve components of the Armed Forces ordered to, or retained on, active duty pursuant to section 672(a) [now 12301(a)], 672(d) [now 12301(d)], 673 [now 12302], 673b [now 12304], or 688 of title 10, United States Code, are being deployed, or have been deployed, in connection with Operation Desert Storm.

''(2) The Secretary of Defense shall determine which areas meet the criteria set out in paragraph (1).

''(d) EDUCATIONAL ASSISTANCE.—Educational assistance authorized by this section may be used for the furnishing of one or more of the following forms of assistance:

''(1) Individual or group counseling for children and other members of the families of members of the Armed Forces of the United States who have been deployed in connection with, or are casualties of, Operation Desert Storm.

''(2) Training and technical assistance to better prepare teachers and other school employees to address questions and concerns of children of such members of the Armed Forces.

''(3) Other appropriate programs, services, and information designed to address the special needs of children and other members of the families of members of the Armed Forces referred to in paragraph (1) resulting from the deployment, the return from deployment, or the medical or rehabilitation needs of such members.

''(e) FAMILY SUPPORT ASSISTANCE.—Family support assistance authorized by this section may be used for the following purposes:

''(1) Family crisis intervention.

''(2) Family counseling.

''(3) Family support groups.

''(4) Expenses for volunteer activities.

''(5) Respite care.

''(6) Housing protection and advocacy.

''(7) Food assistance.

''(8) Employment assistance.

''(9) Child care.

''(10) Benefits eligibility determination services.

''(11) Transportation assistance.

''(12) Adult day care for dependent elderly and disabled adults.

''(13) Temporary housing assistance for immediate family members visiting soldiers wounded during Operation Desert Storm and receiving medical treatment at military hospitals and facilities in the United States.

''(f) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated from the Defense Cooperation Account for fiscal year 1991 under section 101(a) [105 Stat. 78], $30,000,000 shall be available to carry out the provisions of this section. The costs of carrying out such provisions are incremental costs of Operation Desert Storm.''

WITHHOLDING OF PAYMENTS TO INDIRECT-HIRE CIVILIAN PERSONNEL OF NONPAYING PLEDGING NATIONS

Pub. L. 102–25, title VI, § 608, Apr. 6, 1991, 105 Stat. 112, provided that:

''(a) GENERAL RULE.—Effective as of the end of the six-month period beginning on the date of the enactment of this Act [Apr. 6, 1991], the Secretary of Defense shall withhold payments to any nonpaying pledging nation that would otherwise be paid as reimbursements for expenses of indirect-hire civilian personnel of the Department of Defense in that nation.

''(b) NONPAYING PLEDGING NATION DEFINED.—For purposes of this section, the term 'nonpaying pledging nation' means a foreign nation that has pledged to the United States that it will make contributions to assist the United States in defraying the incremental costs of Operation Desert Shield and which has not paid to the United States the full amount so pledged.

''(c) RELEASE OF WITHHELD AMOUNTS.—When a nation affected by subsection (a) has paid to the United States the full amount pledged, the Secretary of Defense shall release the amounts withheld from payment pursuant to subsection (a).

''(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) upon certification to Congress that the waiver is required in the national security interests of the United States.''

PROGRAMMING LANGUAGE FOR DEPARTMENT OF DEFENSE SOFTWARE

Pub. L. 102–396, title IX, § 9070, Oct. 6, 1992, 106 Stat. 1918, provided that: ''Notwithstanding any other provision of law, where cost effective, all Department of Defense software shall be written in the programming language Ada, in the absence of special exemption by an official designated by the Secretary of Defense.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–172, title VIII, § 8073, Nov. 26, 1991, 105 Stat. 1188.

Pub. L. 101–511, title VIII, § 8092, Nov. 5, 1990, 104 Stat. 1896.

CONTRIBUTIONS BY JAPAN TO SUPPORT OF UNITED STATES FORCES IN JAPAN

Pub. L. 101–511, title VIII, § 8105, Nov. 5, 1990, 104 Stat. 1902, as amended by Pub. L. 102–190, div. A, title X, § 1063(b), Dec. 5, 1991, 105 Stat. 1476, provided that:

''(a) PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN.—After September 30, 1990, funds appropriated pursuant to an appropriation contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

''(b) ANNUAL REDUCTION IN CEILING UNLESS SUPPORT FURNISHED.—Unless the President certifies to Congress before the end of each fiscal year that Japan has agreed to offset for that fiscal year the direct costs incurred by the United States related to the presence of all United States military personnel in Japan, excluding the military personnel title costs, the end strength level for that fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year.

''(c) SENSE OF CONGRESS.—It is the sense of Congress that all those countries that share the benefits of international security and stability should share in the responsibility for that stability and security commensurate with their national capabilities. The Congress also recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq. The Congress also recognizes that Japan has a greater economic capability to contribute to international security and stability than any other member of the international community and wishes to encourage Japan to contribute commensurate with that capability.

''(d) EXCEPTIONS.—(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

''(2) The President may waive the limitation in this section for any fiscal year if he declares that it is in the national interest to do so and immediately informs Congress of the waiver and the reasons for the waiver.

''(e) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act [Nov. 5, 1990].''

Section 1455 of Pub. L. 101–510 provided that:

''(a) PURPOSE.—It is the purpose of this section to require Japan to offset the direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of United States military personnel in Japan.

''(b) PERMANENT CEILING ON UNITED STATES ARMED FORCES IN JAPAN.—Funds appropriated pursuant to an authorization contained in this Act or any subsequent Act may not be used to support an end strength level of all personnel of the Armed Forces of the United States stationed in Japan at any level in excess of 50,000.

''(c) SENSE OF CONGRESS ON ALLIED BURDEN SHARING.—(1) Congress recognizes that Japan has made a substantial pledge of financial support to the effort to support the United Nations Security Council resolutions on Iraq.

''(2) It is the sense of Congress that—

''(A) all countries that share the benefits of international security and stability should, commensurate with their national capabilities, share in the responsibility for maintaining that security and stability; and

''(B) given the economic capability of Japan to contribute to international security and stability, Japan should make contributions commensurate with that capability.

''(d) NEGOTIATIONS.—At the earliest possible date after the date of the enactment of this Act [Nov. 5, 1990], the President shall enter into negotiations with Japan for the purpose of achieving an agreement before September 30, 1991, under which Japan offsets all direct costs (other than pay and allowances for United States military and civilian personnel) incurred by the United States related to the presence of all United States military personnel stationed in Japan.

''(e) EXCEPTIONS.—(1) This section shall not apply in the event of a declaration of war or an armed attack on Japan.

''(2) This section may be waived by the President if the President—

''(A) declares an emergency or determines that such a waiver is required by the national security interests of the United States; and

''(B) immediately informs the Congress of the waiver and the reasons for the waiver.''

NATIONAL MILITARY STRATEGY REPORTS

Section 901 of Pub. L. 101–510 provided that:

''(a) REPORTS BY THE SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall submit to Congress a na-

tional military strategy report during each of fiscal years 1992, 1993, and 1994. Each such report shall be submitted with the Secretary's annual report to Congress for that year under section 113(j) of title 10, United States Code.

''(b) MATTERS TO BE COVERED IN REPORTS.—Each such report shall cover a period of at least ten years and shall address the following:

''(1) The threats facing the United States and its allies.

''(2) The degree to which military forces can contribute to the achievement of national objectives.

''(3) The strategic military plan for applying those forces to the achievement of national objectives.

''(4) The risk to the national security of the United States and its allies that ensues.

''(5) The organization and structure of military forces to implement the strategy.

''(6) The broad mission areas for various components of the forces and the broad support requirements to implement the strategy.

''(7) The functions for which each military department should organize, train, and equip forces for the combatant commands responsible for implementing the strategy.

''(8) The priorities assigned to major weapons and equipment acquisitions and to research and development programs in order to fill the needs and eliminate deficiencies of the combatant commands.

''(c) RELATIONSHIP OF PLANS TO BUDGET.—The strategic military plans and other matters covered by each report shall be fiscally constrained and shall relate to the current Department of Defense Multiyear Defense Plan and resource levels projected by the Secretary of Defense to be available over the period covered by the report.

''(d) EFFECTS OF ALTERNATIVE BUDGET LEVELS.—Each such report shall also include an assessment of the effect on the risk and the other components of subsection (b) in the event that (1) an additional $50,000,000,000 is available in budget authority in the fiscal year which is addressed by the budget request that the report accompanies, and (2) budget authority for that fiscal year is reduced by $50,000,000,000. For these assessments the Secretary of Defense shall make appropriate assumptions about the funds available for the remainder of the period covered by the report.

''(e) ROLE OF CHAIRMAN OF JOINT CHIEFS OF STAFF.—In accordance with his role as principal military adviser to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall participate fully in the development of each such report. The Secretary of Defense shall provide the Chairman such additional guidance as is necessary to enable the Chairman to develop and recommend fiscally constrained strategic plans for the Secretary's consideration in accordance with section 153(a)(2) of title 10, United States Code. In accordance with additional responsibilities of the Chairman set out in section 153, the Chairman shall provide recommendations to the Secretary on the other components of paragraph (2).

''(f) CLASSIFICATION OF REPORTS.—The reports submitted to Congress under subsection (a) shall be submitted in both classified and (to the extent practicable) unclassified versions.''

ANNUAL REPORT ON BALANCED TECHNOLOGY INITIATIVE

Section 211(e) of Pub. L. 101–189 provided that: ''Not later than March 15 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the Balanced Technology Initiative and related matters. Each such report shall include the following:

''(1) A current assessment of the extent to which advanced technologies can be used to exploit potential vulnerabilities of hostile threats to the national security of the United States.

''(2) Identification of each program, project, and activity being pursued under the Balanced Technology Initiative and, with respect to each such program, project, and activity, the amount made available pursuant to this section and the source of such amount.

''(3) For each program, project, and activity for which funds are made available pursuant to this section, a five-year funding plan that (A) provides for the allocation of sufficient resources to maintain adequate progress in research and development under such program, project, or activity, and (B) specifies the major programmatic and technical milestones and the schedule for achieving those milestones.

''(4) The status of each program, project, and activity being pursued under the Balanced Technology Initiative.

''(5) Identification of other on-going or potential research and development programs, projects, and activities not currently provided for under this section that should be considered for inclusion under the Balanced Technology Initiative in order to improve conventional defense capabilities.

''(6) Identification of the most critical technologies for the successful development of existing or potential Balanced Technology Initiative programs, projects, and activities and an assessment of the current status of those technologies.''

MILITARY RELOCATION ASSISTANCE PROGRAMS

Section 661 of Pub. L. 101–189, which related to establishment by Secretary of Defense of programs to provide relocation assistance to members of Armed Forces and their families, was repealed and restated in section 1056 of this title by Pub. L. 101–510, div. A, title XIV, §1481(c)(1), (3), Nov. 5, 1990, 104 Stat. 1705.

MILITARY CHILD CARE

Title XV of div. A of Pub. L. 101–189 provided that:

''SEC. 1501. SHORT TITLE; DEFINITIONS

''(a) SHORT TITLE.—This title may be cited as the 'Military Child Care Act of 1989'.

''(b) DEFINITIONS.—For purposes of this title:

''(1) The term 'military child development center' means a facility on a military installation (or on property under the jurisdiction of the commander of a military installation) at which child care services are provided for members of the Armed Forces or any other facility at which such child care services are provided that is operated by the Secretary of a military department.

''(2) The term 'family home day care' means home-based child care services that are provided for members of the Armed Forces by an individual who (A) is certified by the Secretary of the military department concerned as qualified to provide those services, and (B) provides those services on a regular basis for compensation.

''(3) The term 'child care employee' means a civilian employee of the Department of Defense who is employed to work in a military child development center (regardless of whether the employee is paid from appropriated funds or nonappropriated funds).

''(4) The term 'child care fee receipts' means those nonappropriated funds that are derived from fees paid by members of the Armed Forces for child care services provided at military child development centers.

''SEC. 1502. FUNDING FOR MILITARY CHILD CARE FOR FISCAL YEAR 1990

''(a) FISCAL YEAR 1990 FUNDING.—(1) It is the policy of Congress that the amount of appropriated funds available during fiscal year 1990 for operating expenses for military child development centers shall not be less than the amount of child care fee receipts that are estimated to be received by the Department of Defense during that fiscal year. Of the amount authorized to be appropriated for the Department of Defense for fiscal year 1990, $102,000,000 shall be available for operating expenses for military child development centers.

''(2) In addition to the amount referred to in paragraph (1), $26,000,000 shall be available for child care and child-related services of the Department other than military child development centers.

''(3) In using the funds referred to in paragraph (1), the Secretary shall give priority to—

''(A) increasing the number of child care employees who are directly involved in providing child care for members of the Armed Forces; and

''(B) expanding the availability of child care for members of the Armed Forces.

''(b) FUNDS DERIVED FROM PARENT FEES TO BE USED FOR EMPLOYEE COMPENSATION AND OTHER CHILD CARE SERVICES.—(1) Except as provided in paragraph (2), child care fee receipts may be used during fiscal year 1990 only for compensation of child care employees who are directly involved in providing child care.

''(2) If the Secretary of Defense determines that compliance with the limitation in paragraph (1) would result in an uneconomical and inefficient use of such fee receipts, the Secretary may (to the extent that such compliance would be uneconomical and inefficient) use such receipts—

''(A) first, for the purchase of consumable or disposable items for military child development centers; and

''(B) if the requirements of such centers for consumable or disposable items for fiscal year 1990 have been met, for other expenses of those centers.

''(c) REPORT.—(1) Not later than December 31, 1989, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on how the Secretary intends to use the funds referred to in subsection (a), including how the Secretary intends to achieve the priorities specified in paragraph (3) of that subsection.

''(2) If at the time such report is submitted the Secretary proposes to use the authority provided by subsection (b)(2), the Secretary shall include in the report under paragraph (1) a description of the use proposed to be made of that authority and a statement of the reasons why the Secretary determined that compliance with the limitation in subsection (b)(1) would result in an uneconomical and inefficient use of child care fee receipts, together with supporting cost information and other information justifying the determination.

''(3) If the Secretary uses such authority after December 31, 1989, the Secretary shall promptly inform the committees of the use of the authority and of the reasons for its use.

''SEC. 1503. CHILD CARE EMPLOYEES

''(a) REQUIRED TRAINING.—(1) The Secretary of Defense shall establish, and prescribe regulations to implement, a training program for child care employees. Those regulations shall apply uniformly among the military departments. Subject to paragraph (2), satisfactory completion of the training program shall be a condition of employment of any person as a child care employee.

''(2) Under those regulations, the Secretary shall require that each child care employee complete the training program not later than six months after the date on which the employee is employed as a child care employee (except that, in the case of a child care employee hired before the date on which the training program is established, the Secretary shall require that the employee complete the program not later than six months after that date).

''(3) The training program established under this subsection shall cover, at a minimum, training in the following:

''(A) Early childhood development.

''(B) Activities and disciplinary techniques appropriate to children of different ages.

''(C) Child abuse prevention and detection.

''(D) Cardiopulmonary resuscitation and other emergency medical procedures.

''(b) TRAINING AND CURRICULUM SPECIALISTS.—(1) The Secretary of Defense shall require that at least one employee at each military child development center be a specialist in training and curriculum development. The Secretary shall ensure that such employees have appropriate credentials and experience.

''(2) The duties of such employees shall include the following:

''(A) Special teaching activities at the center.

''(B) Daily oversight and instruction of other child care employees at the center.

''(C) Daily assistance in the preparation of lesson plans.

''(D) Assistance in the center's child abuse prevention and detection program.

''(E) Advising the director of the center on the performance of other child care employees.

''(3) Each employee referred to in paragraph (1) shall be an employee in a competitive service position.

''(c) PROGRAM TO TEST COMPETITIVE RATES OF PAY.—(1) For the purpose of improving the capability of the Department of Defense to provide military child development centers with a qualified and stable civilian workforce, the Secretary of Defense shall conduct a program as provided in this subsection to increase the compensation of child care employees. The Secretary shall begin the program not later than six months after the date of the enactment of this Act [Nov. 29, 1989]. The program shall be in effect for a period of at least two years.

''(2) The program shall apply to all child care employees who—

''(A) are directly involved in providing child care; and

''(B) are paid from nonappropriated funds.

''(3) Under the program, child care employees at a military installation who are described in paragraph (2) shall be paid—

''(A) in the case of entry-level employees, at rates of pay competitive with the rates of pay paid to other entry-level employees at that installation who are drawn from the same labor pool; and

''(B) in the case of other employees, at rates of pay substantially equivalent to the rates of pay paid to other employees at that installation with similar training, seniority, and experience.

''(d) EMPLOYMENT PREFERENCE TEST PROGRAM FOR MILITARY SPOUSES.—(1) The Secretary of Defense shall conduct a test program under which qualified spouses of members of the Armed Forces shall be given a preference in hiring for the position of child care employee in a position paid from nonappropriated funds if the spouse is among persons determined to be best qualified for the position. A spouse who is provided a preference under this subsection at a military child development center may not be precluded from obtaining another preference, in accordance with section 806 of the Military Family Act of 1985 [Pub. L. 99–145] (10 U.S.C. 113 note), in the same geographical area as the military child development center.

''(2) The test program under this subsection shall run concurrently with the program under subsection (c).

''(e) REPORT ON COMPENSATION AND SPOUSE EMPLOYMENT PREFERENCE PROGRAMS.—Not later than March 1, 1991, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the programs under subsections (c) and (d). The report shall include the findings of the Secretary concerning the effect of each of the programs on the quality of child care provided in military child development centers and the effect of the spouse employment preference program on employee turnover at such centers.

''(f) ADDITIONAL CHILD CARE POSITIONS.—(1) The Secretary of Defense shall make available for child care programs of the Department of Defense, not later than September 30, 1990, at least 1,000 competitive service positions in addition to the number of competitive service positions in such programs as of September 30, 1989. During fiscal year 1991, the Secretary shall make available to child care programs of the Department additional competitive service positions so that the number of competitive service positions in such programs as of September 30, 1991, is at least 3,700 greater than the number of competitive service positions in such programs as of September 30, 1989.

''(2) The Secretary may waive the increase otherwise required by the second sentence of paragraph (1) to the extent that the Secretary determines that such increase is not executable. If the Secretary issues such a waiver, the Secretary shall promptly submit to the Committees on Armed Services of the Senate and House of Representatives a report on the waiver. Any such report shall specify the number of such positions waived and the reasons for the waiver.

''(3) The additional positions provided for in paragraph (1), and the workyears associated with those positions, that are used outside the United States shall not be counted for purpose of applying any limitation on the total number of positions or workyears, respectively, available to the Department of Defense outside the United States (or any limitation on the availability of appropriated funds for such positions or workyears for any fiscal year).

''(g) COMPETITIVE SERVICE POSITION DEFINED.—For purposes of this section, the term 'competitive service position' means a position in the competitive service, as defined in section 2102(a)(1) of title 5, United States Code.

''SEC. 1504. PARENT FEES

''The Secretary of Defense shall prescribe regulations establishing fees to be charged parents for the attendance of children at military child development centers. Those regulations shall be uniform for the military departments and shall require that, in the case of children who attend the centers on a regular basis, the fees shall be based on family income.

''SEC. 1505. CHILD ABUSE PREVENTION AND SAFETY AT FACILITIES

''(a) CHILD ABUSE TASK FORCE.—The Secretary of Defense shall establish and maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, where appropriate, medicine, psychology, and childhood development. In the case of such allegations, the task force shall provide assistance to the commander of the installation, and to parents at the installation, in helping them to deal with such allegations.

''(b) NATIONAL HOTLINE.—(1) The Secretary of Defense shall establish and maintain a national telephone number for persons to use to report suspected child abuse or safety violations at a military child development center or family home day care site. The Secretary shall ensure that such reports may be made anonymously if so desired by the person making the report. The Secretary shall establish procedures for following up on complaints and information received over that number.

''(2) The Secretary shall establish such national telephone number not later than 90 days after the date of the enactment of this Act [Nov. 29, 1989] and shall publicize the existence of the number.

''(c) ASSISTANCE FROM LOCAL AUTHORITIES.—The Secretary of Defense shall prescribe regulations requiring that, in a case of allegations of child abuse at a military child development center or family home day care site, the commander of the military installation or the head of the task force established under subsection (a) shall seek the assistance of local child protective authorities if such assistance is available.

''(d) SAFETY REGULATIONS.—The Secretary of Defense shall prescribe regulations on safety and operating procedures at military child development centers. Those regulations shall apply uniformly among the military departments.

''(e) INSPECTIONS.—The Secretary of Defense shall require that each military child development center be inspected not less often than four times a year. Each such inspection shall be unannounced. At least one inspection a year shall be carried out by a representative of the installation served by the center, and one inspection a year shall be carried out by a representative of the major command under which that installation operates.

''(f) REMEDIES FOR VIOLATIONS.—(1) Except as provided in paragraph (2), any violation of a safety, health, or child welfare law or regulation (discovered at an inspection or otherwise) at a military child development center shall be remedied immediately.

''(2) In the case of a violation that is not life threatening, the commander of the major command under which the installation concerned operates may waive the requirement that the violation be remedied immediately for a period of up to 90 days beginning on the date of the discovery of the violation. If the violation is not remedied as of the end of that 90-day period, the military child development center shall be closed until the violation is remedied. The Secretary of the military department concerned may waive the preceding sentence and authorize the center to remain open in a case in which the violation cannot reasonably be remedied within that 90-day period or in which major facility reconstruction is required.

''(3) If a military child development center is closed under paragraph (2), the Secretary of the military department concerned shall promptly submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report notifying those committees of the closing. The report shall include—

''(A) notice of the violation that resulted in the closing and the cost of remedying the violation; and

''(B) a statement of the reasons why the violation has not been remedied as of the time of the report.

''(g) REPORT ON COOPERATION WITH DEPARTMENT OF JUSTICE.—(1) The Secretary of Defense, in consultation with the Attorney General, shall study matters relating to military child care that are of concern to the Department of Justice. The matters studied shall include the following:

''(A) Improving communication between the Department of Defense and the Department of Justice in investigations of child abuse in military programs and in the coordination of the conduct of such investigations.

''(B) Eliminating overlapping responsibilities between the two departments.

''(C) Making better use of government and non-government experts in child abuse investigations and prosecutions.

''(D) Improving communication with affected families by the Department of Defense, the Department of Justice, and appropriate State and local agencies.

''(2) Not later than six months after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to Congress a report on the study required by paragraph (1). The report shall include recommendations on methods for improving the matters studied.

''(3) Not later than nine months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report evaluating the findings in the report submitted under paragraph (2).

''SEC. 1506. PARENT PARTNERSHIPS WITH CHILD DEVELOPMENT CENTERS

''(a) PARENT BOARDS.—The Secretary of Defense shall require that there be established at each military child development center a board of parents, to be composed of parents of children attending the center. The board shall meet periodically with staff of the center and the commander of the installation served by the center for the purpose of discussing problems and concerns. The board, together with the staff of the center, shall be responsible for coordinating the parent participation program described in subsection (b).

''(b) PARENT PARTICIPATION PROGRAMS.—The Secretary of Defense shall require the establishment of a parent participation program at each military child development center. As part of such program, the Secretary of Defense may establish fees for attendance of children at such a center, in the case of parents who participate in the parent participation program at that center, at rates lower than the rates that otherwise apply.

''SEC. 1507. REPORT ON FIVE-YEAR DEMAND FOR CHILD CARE

''(a) REPORT REQUIRED.—Not later than six months after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to Congress a report on the expected demand for child care by military and civilian personnel of the Department of Defense during fiscal years 1991 through 1995.

''(b) PLAN FOR MEETING DEMAND.—The report shall include—

''(1) a plan for meeting the expected child care demand identified in the report; and

''(2) an estimate of the cost of implementing that plan.

''(c) MONITORING OF FAMILY DAY CARE PROVIDERS.—The report shall also include a description of methods for monitoring family home day care programs of the military departments.

''SEC. 1508. SUBSIDIES FOR FAMILY HOME DAY CARE

''The Secretary of Defense may use appropriated funds available for military child care purposes to provide assistance to family home day care providers so that family home day care services can be provided to members of the Armed Forces at a cost comparable to the cost of services provided by military child development centers. The Secretary shall prescribe regulations for the provision of such assistance.

''SEC. 1509. EARLY CHILDHOOD EDUCATION DEMONSTRATION PROGRAM

''(a) DEMONSTRATION PROGRAM FOR ACCREDITED CENTERS.—(1) The Secretary of Defense shall carry out a program to demonstrate the effect on the development of preschool children of requiring that military child development centers meet standards of operation necessary for accreditation by an appropriate national early childhood programs accrediting body. To carry out such demonstration program, the Secretary shall ensure that not later than June 1, 1991, at least 50 military child development centers are accredited by such an appropriate national early childhood accrediting body.

''(2) Each military child development center so accredited shall be designated as an early childhood education demonstration project and shall serve as a program model for other military child development centers and family home day care providers at military installations.

''(b) PLAN FOR IMPLEMENTATION.—Not later than April 1, 1990, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a plan for carrying out the requirements of subsection (a).

''(c) EVALUATION.—The Secretary shall obtain an independent evaluation of the demonstration program carried out under subsection (a) to determine the extent to which the imposition of a requirement that military child development centers meet accreditation standards effectively promotes the development of preschool children of members of the Armed Forces. The Secretary shall report the results of the evaluation to Congress, together with such comments and recommendations as the Secretary considers appropriate, not later than July 15, 1992.

''SEC. 1510. DEADLINE FOR REGULATIONS

''Regulations required to be prescribed by this title shall be prescribed not later than 90 days after the date of the enactment of this Act [Nov. 29, 1989].''

LEAD AGENCY FOR DETECTION OF TRANSIT OF ILLEGAL DRUGS

Section 1102 of Pub. L. 100–456, which designated the Department of Defense as the single lead agency of the Federal Government for detection and monitoring of aerial and maritime transit of illegal drugs into the United States, was repealed and restated as section 124 of this title by Pub. L. 101–189, § 1202(a)(1), (b).

ANNUAL ASSESSMENT OF SECURITY AT UNITED STATES BASES IN PHILIPPINES

Section 1309 of Pub. L. 100–456 directed Secretary of Defense to submit to Congress annual reports assessing security at United States military facilities in Republic of Philippines, prior to repeal by Pub. L. 102–484, div. A, title X, § 1074, Oct. 23, 1992, 106 Stat. 2511.

DEPARTMENT OF DEFENSE OVERSEAS PERSONNEL; ACTIONS RESULTING IN MORE BALANCED SHARING OF DEFENSE AND FOREIGN ASSISTANCE SPENDING BURDENS BY UNITED STATES AND ALLIES; REPORTS TO CONGRESS; LIMITATION ON ACTIVE DUTY ARMED FORCES MEMBERS IN JAPAN AND REPUBLIC OF KOREA

Pub. L. 100–463, title VIII, § 8125, Oct. 1, 1988, 102 Stat. 2270–41, as amended by Pub. L. 101–189, div. A, title XVI, § 1623, Nov. 29, 1989, 103 Stat. 1606; Pub. L. 103–236, title I, § 162(j), Apr. 30, 1994, 108 Stat. 408, provided that:

''(a)(1) Not later than March 1, 1989, the Secretary of Defense shall submit to Congress a report on the assignment of military missions among the member countries of North Atlantic Treaty Organization (NATO) and on the prospects for the more effective assignment of such missions among such countries.

''(2) The report shall include a discussion of the following:

''(A) The current assignment of military missions among the member countries of NATO.

''(B) Military missions for which there is duplication of capability or for which there is inadequate capability within the current assignment of military missions within NATO.

''(C) Alternatives to the current assignment of military missions that would maximize the military contributions of the member countries of NATO.

''(D) Any efforts that are underway within NATO or between individual member countries of NATO at the time the report is submitted that are intended to result in a more effective assignment of military missions within NATO.

''(b) The Secretary of Defense and the Secretary of State shall (1) conduct a review of the long-term strategic interests of the United States overseas and the future requirements for the assignment of members of the Armed Forces of the United States to permanent duty ashore outside the United States, and (2) determine specific actions that, if taken, would result in a more balanced sharing of defense and foreign assistance spending burdens by the United States and its allies. Not later than August 1, 1989, the Secretary of Defense and the Secretary of State shall transmit to Congress a report containing the findings resulting from the review and their determinations.

''(c) [Repealed. Pub. L. 103–236, title I, § 162(j), Apr. 30, 1994, 108 Stat. 408.]

''(d) The President shall specify (separately by appropriation account) in the Department of Defense items included in each budget submitted to Congress under section 1105 of title 31, United States Code, (1) the amounts necessary for payment of all personnel, operations, maintenance, facilities, and support costs for Department of Defense overseas military units, and (2) the costs for all dependents who accompany Department of Defense personnel outside the Unied [sic] States.

''(e) Not later than May 1, 1989, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a report that sets forth the total costs required to support the dependents who accompany Department of Defense personnel assigned to permanent duty overseas.

''(f) As of September 30 of each fiscal year, the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea may not exceed 94,450 (the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea on September 30, 1987). The limitation in the pre-

ceding sentence may be increased if and when (1) a major reduction of United States forces in the Republic of the Philippines is required because of a loss of basing rights in that nation, and (2) the President determines and certifies to Congress that, as a consequence of such loss, an increase in United States forces stationed in Japan and the Republic of Korea is necessary.

''(g)(1) After fiscal year 1990, budget submissions to Congress under section 1105 of title 31, United States Code, shall identify funds requested for Department of Defense personnel and units in permanent duty stations ashore outside the United States that exceed the amount of such costs incurred in fiscal year 1989 and shall set forth a detailed description of (A) the types of expenditures increased, by appropriation account, activity and program; and (B) specific efforts to obtain allied host nations' financing for these cost increases.

''(2) The Secretary of Defense shall notify in advance the Committees on Appropriations and Armed Services of the Senate and House of Representatives [Committee on Armed Services of the House of Representatives now Committee on National Security], through existing notification procedures, when costs of maintaining Department of Defense personnel and units in permanent duty stations ashore outside the United States will exceed the amounts as defined in the Department of Defense budget as enacted for that fiscal year. Such notification shall describe: (A) the type of expenditures that increased; and (B) the source of funds (including prior year unobligated balances) by appropriation account, activity and program, proposed to finance these costs.

''(3) In computing the costs incurred for maintaining Department of Defense personnel and forces in permanent duty stations ashore outside the United States compared with the amount of such costs incurred in fiscal year 1989, the Secretary shall—

''(A) exclude increased costs resulting from increases in the rates of pay provided for members of the Armed Forces and civilian employees of the United States Government and exclude any cost increases in supplies and services resulting from inflation; and

''(B) include (i) the costs of operation and maintenance and of facilities for the support of Department of Defense overseas personnel, and (ii) increased costs resulting from any decline in the foreign exchange rate of the United States dollar.

''(h) The provisions of subsections (f) and (g) shall not apply in time of war or during a national emergency declared by the President or Congress.

''(i) In this section—

''(1) the term 'personnel' means members of the Armed Forces of the United States and civilian employees of the Department of Defense;

''(2) the term 'Department of Defense overseas personnel' means those Department of Defense personnel who are assigned to permanent duty ashore outside the United States; and

''(3) the term 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.''

ANNUAL REPORT ON COSTS OF STATIONING UNITED STATES TROOPS OVERSEAS

Pub. L. 100–202, §101(b) [title VIII, §8042], Dec. 22, 1987, 101 Stat. 1329–43, 1329–69, which required Secretary of Defense to submit annual report on full costs of stationing United States troops overseas, etc., was repealed and restated in subsec. (k) [now (j)] of this section by Pub. L. 100–370, §1(*o*).

REGULATIONS REGARDING EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Section 637 of Pub. L. 100–180 provided that: ''Not later than 60 days after the date of the enactment of this Act [Dec. 4, 1987], the Secretary of Defense shall prescribe regulations to establish the policy that—

''(1) the decision by a spouse of a member of the Armed Forces to be employed or to voluntarily participate in activities relating to the Armed Forces should not be influenced by the preferences or requirements of the Armed Forces; and

''(2) neither such decision nor the marital status of a member of the Armed Forces should have an effect on the assignment or promotion opportunities of the member.''

TEST PROGRAM FOR REIMBURSEMENT FOR ADOPTION EXPENSES

Section 638 of Pub. L. 100–180, as amended by Pub. L. 101–189, div. A, title VI, §662, Nov. 29, 1989, 103 Stat. 1465; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(1), Nov. 5, 1990, 104 Stat. 1719, provided that:

''(a) TEST PROGRAM.—The Secretary of Defense shall carry out a test program under which a member of the Armed Forces under the jurisdiction of the Secretary may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member. The Secretary of Transportation shall carry out a similar test program under which a member of the Coast Guard may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member.

''(b) ADOPTIONS COVERED.—An adoption for which expenses may be reimbursed under this section includes an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c)).

''(c) BENEFITS PAID AFTER ADOPTION IS FINAL.—Benefits paid under this section in the case of an adoption may be paid only after the adoption is final.

''(d) TREATMENT OF OTHER BENEFITS.—A benefit may not be paid under this section for any expense paid to or for a member of the Armed Forces under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

''(e) LIMITATIONS.—(1) Not more than $2,000 may be paid to a member of the Armed Forces under this section for expenses incurred in the adoption of a child.

''(2) Not more than $5,000 may be paid to a member of the Armed Forces under this section for adoptions by such member in any calendar year.

''(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section with respect to members of the Armed Forces under the Secretary's jurisdiction. The Secretary of Transportation shall prescribe regulations to carry out this section with respect to members of the Coast Guard.

''(g) DEFINITIONS.—In this section:

''(1) The term 'qualifying adoption expenses' means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged—

''(A) by a State or local government agency which has responsibility under State or local law for child placement through adoption;

''(B) by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption; or

''(C) through a private placement.

''(2) The term 'qualifying adoption expenses' does not include any expense incurred—

''(A) for any travel performed outside the United States by an adopting parent, unless such travel—

''(i) is required by law as a condition of a legal adoption in the country of the child's origin, or is otherwise necessary for the purpose of qualifying for the adoption of a child;

''(ii) is necessary for the purpose of assessing the health and status of the child to be adopted; or

''(iii) is necessary for the purpose of escorting the child to be adopted to the United States or the place where the adopting member of the Armed Forces is stationed; or

''(B) in connection with an adoption arranged in violation of Federal, State, or local law.

''(3) The term 'reasonable and necessary expenses' includes—

''(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

''(B) placement fees, including fees charged adoptive parents for counseling;

''(C) legal fees, including court costs;

''(D) medical expenses, including hospital expenses of a newborn infant, for medical care furnished the adopted child before the adoption, and for physical examinations for the adopting parents;

''(E) expenses relating to pregnancy and childbirth for the biological mother, including counseling, transportation, and maternity home costs;

''(F) temporary foster care charges when payment of such charges is required to be made immediately before the child's placement; and

''(G) except as provided in paragraph (2)(A), transportation expenses relating to the adoption.

''(h) DURATION OF TEST PROGRAM.—The test program under this section shall apply with respect to qualifying adoption expenses incurred for adoption proceedings initiated—

''(1) in the case of a member of the Army, Navy, Air Force, or Marine Corps, after September 30, 1987, and before October 1, 1990; and

''(2) in the case of a member of the Coast Guard, after September 30, 1989, and before October 1, 1990.''

COUNTERINTELLIGENCE POLYGRAPH PROGRAM

Section 1121 of Pub. L. 100–180, provided that:

''(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be based on Department of Defense Directive 5210.48, dated December 24, 1984.

''(b) PERSONS COVERED.—Except as provided in subsection (d), the following persons whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 [set out as a note under section 401 of Title 50, War and National Defense] (or a successor Executive order) are subject to this section:

''(1) Military and civilian personnel of the Department of Defense.

''(2) Personnel of defense contractors.

''(c) LIMITATION ON NUMBER OF EXAMINATIONS.—The number of counterintelligence polygraph examinations that may be administered under this section—

''(1) may not exceed 10,000 during each of fiscal years 1988, 1989, and 1990; and

''(2) may not exceed 5,000 during any fiscal year after fiscal year 1990 for which a specific number is not otherwise provided by law.

''(d) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply—

''(1) to a person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency;

''(2) to (A) a person employed by or assigned or detailed to the National Security Agency, (B) an expert or consultant under contract to the National Security Agency, (C) an employee of a contractor of the National Security Agency, or (D) a person applying for a position in the National Security Agency;

''(3) to a person assigned to a space where sensitive cryptographic information is produced, processed, or stored; or

''(4) to a person employed by, or assigned or detailed to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

''(e) POLYGRAPH RESEARCH PROGRAM.—The Secretary of Defense shall carry out a continuing research program to support the polygraph activities of the Department of Defense. The program shall include—

''(1) an on-going evaluation of the validity of polygraph techniques used by the Department;

''(2) research on polygraph countermeasures and anti-countermeasures; and

''(3) developmental research on polygraph techniques, instrumentation, and analytic methods.

''(f) ANNUAL REPORT ON POLYGRAPH PROGRAMS.—(1) Not later than January 15 of each year, the Secretary of Defense shall submit to Congress a report on polygraph examinations administered by or for the Department of Defense during the previous fiscal year (whether administered under this section or any other authority).

''(2) Each such report shall include the following with regard to the program authorized by subsection (a):

''(A) A statement of the number of polygraph examinations administered by or for the Department of Defense during such fiscal year.

''(B) A description of the purposes and results of such examinations.

''(C) A description of the criteria used for selecting programs and persons for such examination.

''(D) A statement of the number of persons who refused to submit to such an examination and a description of the actions taken as a result of the refusals.

''(E) A statement of the number of persons for which such an examination indicated deception and the action taken as a result of the examinations.

''(F) A detailed accounting of those cases in which more than two such examinations were needed to attempt to resolve discrepancies and those cases in which the examination of a person extended over more than one day.

''(3) Each such report shall also include the following:

''(A) A description of any plans to expand the use of polygraph examinations in the Department of Defense.

''(B) A discussion of any plans of the Secretary for recruiting and training additional polygraph operators together with statistical data on the employment turnover of Department of Defense polygraph operators.

''(C) A description of the results during the preceding fiscal year of the research program under subsection (e).

''(D) A statement of the number of polygraph examinations administered to persons described in subsection (d) (which number may be set forth in a classified annex to the report).

''(g) REPEAL.—Section 1221 of the Department of Defense Authorization Act, 1986 (Public Law 99–145; 99 Stat. 726) [not classified to the Code], is repealed.

''(h) EFFECTIVE DATE.—This section shall take effect as of October 1, 1987.''

COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR

Pub. L. 99–661, div. A, title VI, § 612, Nov. 14, 1986, 100 Stat. 3878, provided that: ''The Secretary of each military department shall establish procedures to ensure that, to the maximum extent practicable within operational and other military requirements, permanent change of station moves for members of the Armed Forces under the jurisdiction of the Secretary who have dependents in elementary or secondary school occur at times that avoid disruption of the school schedules of such dependents.''

COMPARABLE BUDGETING FOR SIMILAR SYSTEMS

Pub. L. 99–500, § 101(c) [title X, § 955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, § 101(c) [title X, § 955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, § 955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, which provided that in preparing the defense budget for any fiscal year, the

Secretary of Defense was to specifically identify each common procurement weapon system included in the budget, take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system, and identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems, and that the Secretary of Defense carry out this section through the Assistant Secretary of Defense (Comptroller), was repealed and restated in section 2217 of this title by Pub. L. 100–370, §1(d)(3).

ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF JOINT OFFICER PERSONNEL POLICY

Section 405 of Pub. L. 99–433 provided that: ''The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of title 10, United States Code (as redesignated by section 101(a)), for each year from 1987 through 1991 a detailed report on the implementation of this title and the amendments made by this title [enacting chapter 38 of this title, amending sections 601, 612, 615, 618, and 619 of this title, and enacting provisions set out as notes under sections 113, 612, 661, 663, and 664 of this title].''

INITIAL REPORT TO CONGRESS

Section 406(g) of Pub. L. 99–433 provided that: ''The first report submitted by the Secretary of Defense after the date of the enactment of this Act [Oct. 1, 1986] under section 113(c) of title 10, United States Code (as redesignated by section 101), shall contain as much of the information required by section 667 of such title (as added by section 401) as is available to the Secretary at the time of the preparation of the report.''

SECURITY AT MILITARY BASES ABROAD

Pub. L. 99–399, title XI, Aug. 27, 1986, 100 Stat. 894, provided that:

''SEC. 1101. FINDINGS.

''The Congress finds that—

''(1) there is evidence that terrorists consider bases and installations of United States Armed Forces outside the United States to be targets for attack;

''(2) more attention should be given to the protection of members of the Armed Forces, and members of their families, stationed outside the United States; and

''(3) current programs to educate members of the Armed Forces, and members of their families, stationed outside of the United States to the threats of terrorist activity and how to protect themselves should be substantially expanded.

''SEC. 1102. RECOMMENDED ACTIONS BY THE SECRETARY OF DEFENSE.

''It is the sense of the Congress that—

''(1) the Secretary of Defense should review the security of each base and installation of the Department of Defense outside the United States, including the family housing and support activities of each such base or installation, and take the steps the Secretary considers necessary to improve the security of such bases and installations; and

''(2) the Secretary of Defense should institute a program of training for members of the Armed Forces, and for members of their families, stationed outside the United States concerning security and antiterrorism.

''SEC. 1103. REPORT TO THE CONGRESS.

''No later than June 30, 1987, the Secretary of Defense shall report to the Congress on any actions taken by the Secretary described in section 1102.''

SURCHARGE FOR SALES BY ANIMAL DISEASE PREVENTION AND CONTROL CENTERS; FEE FOR VETERINARY SERVICES

Pub. L. 99–145, title VI, §685(a), (b), (d), Nov. 8, 1985, 99 Stat. 666, provided that:

''(a) REQUIRED SURCHARGE.—The Secretary of Defense shall require that each time a sale is recorded at a military animal disease prevention and control center the person to whom the sale is made shall be charged a surcharge of $2.

''(b) DEPOSIT OF RECEIPTS IN TREASURY.—Amounts received from surcharges under this section shall be deposited in the Treasury in accordance with section 3302 of title 31.''

''(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1985.''

Pub. L. 98–94, title X, §1033, Sept. 24, 1983, 97 Stat. 672, as amended by Pub. L. 98–525, title VI, §656, Oct. 19, 1984, 98 Stat. 2553, effective Oct. 1, 1985, required payment by a member of the Armed Forces of a $10 fee for veterinary services, prior to repeal by Pub. L. 99–145, title VI, §685(c), (d), Nov. 8, 1985, 99 Stat. 666, effective Oct. 1, 1985.

MILITARY FAMILY POLICY AND PROGRAMS

Pub. L. 99–145, title VIII, Nov. 8, 1985, 99 Stat. 678, as amended by Pub. L. 99–661, div. A, title VI, §653, Nov. 14, 1986, 100 Stat. 3890; Pub. L. 100–180, div. A, title VI, §635, Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–456, div. A, title V, §524, Sept. 29, 1988, 102 Stat. 1975, provided that:

''SEC. 801. SHORT TITLE

''This title may be cited as the 'Military Family Act of 1985'.

''SEC. 802. OFFICE OF FAMILY POLICY

''(a) ESTABLISHMENT.—There is hereby established in the Office of the Secretary of Defense an Office of Family Policy (hereinafter in this section referred to as the 'Office'). The Office shall be under the Assistant Secretary of Defense for Force Management and Personnel.

''(b) DUTIES.—The Office—

''(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

''(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

''(c) STAFF.—The Office shall have not less than five professional staff members.

''(d) REPORT.—The Secretary of Defense shall submit a report to Congress concerning the Office no later than September 30, 1986. The report shall include—

''(1) a description of the activities of the Office and the composition of its staff; and

''(2) the recommendations of the Office for legislative and administrative action to enhance the well-being of military families.

''SEC. 803. TRANSFER OF MILITARY FAMILY RESOURCE CENTER

''The Military Family Resource Center of the Department of Defense is hereby transferred from the Office of the Assistant Secretary of Defense for Health Affairs to the Office of the Assistant Secretary for Force Management and Personnel.

''SEC. 804. SURVEYS OF MILITARY FAMILIES

''The Secretary of Defense may conduct surveys of members of the Armed Forces serving on active duty, members of the families of such members, and retired members of the Armed Forces to determine the effectiveness of existing Federal programs relating to military families and the need for new programs. Responses to surveys conducted under this section shall be voluntary. With respect to such surveys, family members of members of the Armed Forces and retired members of the Armed Forces shall be considered to be employees of the United States for purposes of section 3502(4)(A) of title 44, United States Code.

''SEC. 805. FAMILY MEMBERS SERVING ON ADVISORY COMMITTEES

''A committee within the Department of Defense which advises or assists the Department in the performance of any function which affects members of

military families and which includes members of military families in its membership shall not be considered an advisory committee under section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) solely because of such membership.

''SEC. 806. EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES

''(a) AUTHORITY.—The President shall order such measures as the President considers necessary to increase employment opportunities for spouses of members of the Armed Forces. Such measures may include—

''(1) excepting, pursuant to section 3302 of title 5, United States Code, from the competitive service positions in the Department of Defense located outside of the United States to provide employment opportunities for qualified spouses of members of the Armed Forces in the same geographical area as the permanent duty station of the members; and

''(2) providing preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations—

''(1) to implement such measures as the President orders under subsection (a);

''(2) to provide preference to qualified spouses of members of the Armed Forces in hiring for any civilian position in the Department of Defense if the spouse is among persons determined to be best qualified for the position and if the position is located in the same geographical area as the permanent duty station of the member;

''(3) to ensure that notice of any vacant position in the Department of Defense is provided in a manner reasonably designed to reach spouses of members of the Armed Forces whose permanent duty stations are in the same geographic area as the area in which the position is located; and

''(4) to ensure that the spouse of a member of the Armed Forces who applies for a vacant position in the Department of Defense shall, to the extent practicable, be considered for any such position located in the same geographic area as the permanent duty station of the member.

''(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to provide a spouse of a member of the Armed Forces with preference in hiring over an individual who is a preference eligible.

[Amended Pub. L. 99–661, div. A, title VI, § 653, Nov. 14, 1986, 100 Stat. 3890.]

''SEC. 807. YOUTH SPONSORSHIP PROGRAM

''The Secretary of Defense shall direct that there be established at each military installation a youth sponsorship program to facilitate the integration of dependent children of members of the Armed Forces into new surroundings when moving to that military installation as a result of a parent's permanent change of station. Such a program shall, to the extent feasible, provide for involvement of dependent children of members presently stationed at the military installation.

''SEC. 808. DEPENDENT STUDENT TRAVEL WITHIN THE UNITED STATES

''Funds available to the Department of Defense for the travel and transportation of dependent students of members of the Armed Forces stationed overseas may be obligated for transportation allowances for travel within or between the contiguous States.

''SEC. 809. RELOCATION AND HOUSING

''(a) RELOCATION ASSISTANCE.—The Secretary of Defense shall submit to Congress a report on the desirability and feasibility of providing relocation assistance to members of the uniformed services and their families through contracts entered into by the Department of Defense with firms which provide such assistance to individuals. Such report shall be submitted not later than March 1, 1986.

''(b) AMORTIZATION PERIOD FOR PARKING FACILITIES FOR HOUSE TRAILERS AND MOBILE HOMES.—Section 403(k) of title 37, United States Code, is amended by striking out '15-year period' and inserting in lieu thereof '25-year period'.

''(c) COST OF UNACCOMPANIED PERSONNEL HOUSING FOR MEMBERS OF UNIFORMED SERVICE.—Section 5911 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

'''(h) A member of the uniformed service on a permanent change of duty station or temporary duty orders and occupying unaccompanied personnel housing—

'''(1) is exempt from the requirement of subsection (c) to pay a rental rate or charge based on the reasonable value of the quarters and facilities provided; and

'''(2) shall pay such lesser rate or charge as the Secretary of Defense establishes by regulation.'.

''SEC. 810. FOOD PROGRAMS

''(a) FOOD COSTS FOR CERTAIN ENLISTED MEMBERS.—Section 1011 of title 37, United States Code, is amended by adding at the end thereof the following new subsection:

'''(c) Spouses and dependent children of enlisted members in pay grades E–1, E–2, E–3, and E–4 may not be charged for meals sold at messes in excess of a level sufficient to cover food costs.'.

''(b) REPORT ON ISSUANCE OF FOOD STAMPS COUPONS TO OVERSEAS HOUSEHOLDS OF MEMBERS STATIONED OUTSIDE THE UNITED STATES.—(1) The Secretary of Defense shall submit to Congress a report on the feasibility of having the Department issue food stamp coupons to overseas households of members stationed outside the United States.

''(2) The report shall include—

''(A) an estimate of the cost of providing the coupons; and

''(B) legislative and administrative recommendations for providing for the issuance of the coupons.

''(3) The report shall be submitted not later than December 31, 1985.

''SEC. 811. REPORTING OF CHILD ABUSE

''(a) IN GENERAL.—The Secretary of Defense shall request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the Armed Forces (or the spouse of the member).

''(b) DEFINITION.—For purposes of this section the term 'child abuse and neglect' shall have the same meaning as provided in section 3(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102).

''SEC. 812. MISCELLANEOUS REPORTING REQUIREMENTS

''(a) HOUSING AVAILABILITY.—(1) The Secretary of Defense shall submit to Congress a report on the availability and affordability of off-base housing for members of the Armed Forces and their families.

''(2) The report shall—

''(A) examine the availability of affordable housing for each pay grade and for all geographic areas within the United States and for appropriate overseas locations; and

''(B) examine the relocation assistance provided by the Department of Defense incident to a permanent change of station by a member of the Armed Forces in locating housing at the member's new duty station and in disposing of housing at the member's old duty station.

''(3) The report shall be submitted within one year after the date of the enactment of this Act [Nov. 8, 1985].

''(b) NEED FOR ASSISTANCE TO DEPENDENTS ENTERING NEW SECONDARY SCHOOLS.—The Secretary of Defense shall submit to Congress a report recommending ad-

ministrative and legislative action to assist families of members of the Armed Forces making a permanent change of station so that a dependent child who transfers between secondary schools with different graduation requirements is not subjected to unnecessary disruptions in education or inequitable, unduly burdensome, or duplicative education requirements. Such report shall be submitted within one year after the date of the enactment of this Act [Nov. 8, 1985].

''SEC. 813. EFFECTIVE DATE

''This title shall take effect on October 1, 1985.''

ACADEMIC INSTITUTIONS ELIGIBLE TO PROVIDE EDUCATIONAL SERVICES; PROHIBITION OF CERTAIN RESTRICTIONS

Pub. L. 99–145, title XII, §1212, Nov. 8, 1985, 99 Stat. 726, as amended by Pub. L. 101–189, div. A, title V, §518, Nov. 29, 1989, 103 Stat. 1443, provided that:

''(a) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees may discriminate against or preclude any accredited academic institution authorized to award one or more associate degrees from offering courses within its lawful scope of authority solely on the basis of such institution's lack of authority to award a baccalaureate degree.

''(b) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees, other than those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution. However, nothing in this section shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible.

''(c)(1) The Secretary of Defense shall conduct a study to determine the current and future needs of members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees for postsecondary education services at overseas locations. The Secretary shall determine on the basis of the results of that study whether the policies and procedures of the Department in effect on the date of the enactment of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991 [probably means date of enactment of Pub. L. 101–189, Nov. 29, 1989] with respect to the procurement of such services are—

''(A) consistent with the provisions of subsections (a) and (b);

''(B) adequate to ensure the recipients of such services the benefit of a choice in the offering of such services; and

''(C) adequate to ensure that persons stationed at geographically isolated military installations or at installations with small complements of military personnel are adequately served.

The Secretary shall complete the study in such time as necessary to enable the Secretary to submit the report required by paragraph (2)(A) by the deadline specified in that paragraph.

''(2)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study referred to in paragraph (1), together with a copy of any revisions in policies and procedures made as a result of such study. The report shall be submitted not later than March 1, 1990.

''(B) The Secretary shall include in the report an explanation of how determinations are made with regard to—

''(i) affording members, employees, and dependents a choice in the offering of courses of postsecondary education; and

''(ii) whether the services provided under a contract for such services should be limited to an installation, theater, or other geographic area.

''(3)(A) Except as provided in subparagraph (B), no contract for the provision of services referred to in subsection (a) may be awarded, and no contract or agreement entered into before the date of the enactment of this paragraph [Nov. 29, 1989] may be renewed or extended on or after such date, until the end of the 60-day period beginning on the date on which the report referred to in paragraph (2)(A) is received by the committees named in that paragraph.

''(B) A contract or an agreement in effect on October 1, 1989, for the provision of postsecondary education services in the European Theater for members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees may be renewed or extended without regard to the limitation in subparagraph (A).

''(C) In the case of a contract for services with respect to which a solicitation is pending on the date of the enactment of this paragraph [Nov. 29, 1989], the contract may be awarded—

''(i) on the basis of the solicitation as issued before the date of the enactment of this paragraph;

''(ii) on the basis of the solicitation issued before the date of the enactment of this paragraph modified so as to conform to any changes in policies and procedures the Secretary determines should be made as a result of the study required under paragraph (1); or

''(iii) on the basis of a new solicitation.

''(d) Nothing in this section shall be construed to require more than one academic institution to be authorized to offer courses aboard a particular naval vessel.''

REPORT OF UNOBLIGATED BALANCES

Pub. L. 99–145, title XIV, §1407, Nov. 8, 1985, 99 Stat. 745, required reports on unobligated balances, prior to repeal by Pub. L. 99–661, div. A, title XIII, §1307(b), Nov. 14, 1986, 100 Stat. 3981. See section 2215 of this title.

DEFENSE INDUSTRIAL BASE FOR TEXTILE AND APPAREL PRODUCTS

Pub. L. 99–145, title XIV, §1456, Nov. 8, 1985, 99 Stat. 762, which directed Secretary of Defense to monitor capability of domestic textile and apparel industrial base to support defense mobilization requirements and to make annual reports to Congress on status of such industrial base, was repealed and restated in section 2510 of this title by Pub. L. 101–510, §826(a)(1), (b).

HOTLINE BETWEEN UNITED STATES AND SOVIET UNION

Pub. L. 99–85, Aug. 8, 1985, 99 Stat. 286, as amended by Pub. L. 103–199, title IV, §404(a), Dec. 17, 1993, 107 Stat. 2325, provided: ''That the Secretary of Defense may provide to Russia, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Russian part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963. The Secretary shall provide such equipment and services to Russia at the cost thereof to the United States.

''SEC. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

''(b) Funds received from Russia as payment for such equipment and services shall be credited to the appropriate account of Department of Defense.''

[Pub. L. 103–199, title IV, §404(b), Dec. 17, 1993, 107 Stat. 2325, provided that: ''The amendment made by subsection (a)(2) [amending section 2(b) of Pub. L. 99–85,

set out above] does not affect the applicability of section 2(b) of that joint resolution to funds received from the Soviet Union.'']

CONSOLIDATION OF FUNCTIONS OF MILITARY TRANSPORTATION COMMANDS PROHIBITED

Pub. L. 97–252, title XI, § 1110, Sept. 8, 1982, 96 Stat. 747, provided that none of funds appropriated pursuant to an authorization of appropriations could be used for purpose of consolidating any functions being performed on Sept. 8, 1982, by Military Traffic Management Command of Army, Military Sealift Command of Navy, or Military Airlift Command of Air Force with any function being performed on such date by either or both of the other commands, prior to repeal by Pub. L. 99–433, title II, § 213(a), Oct. 1, 1986, 100 Stat. 1018.

REPORTS TO CONGRESS ON RECOMMENDATIONS WITH RESPECT TO ELIMINATION OF WASTE, FRAUD, ABUSE, AND MISMANAGEMENT IN DEPARTMENT OF DEFENSE

Pub. L. 97–86, title IX, § 918, Dec. 1, 1981, 95 Stat. 1132, directed Secretary of Defense, not later than January 15, 1982 and 1983, to submit to Congress reports containing recommendations to improve efficiency and management of, and to eliminate waste, fraud, abuse, and mismanagement in, operation of Department of Defense, and to include each recommendation by Comptroller General since Jan. 1, 1979, for elimination of waste, fraud, abuse, or mismanagement in Department of Defense with a statement as to which have been adopted and, to extent practicable actual and projected cost savings from each, and which have not been adopted and, to extent practicable, projected cost savings from each and an explanation of why each such recommendation was not adopted.

MILITARY INSTALLATIONS TO BE CLOSED IN UNITED STATES, GUAM, OR PUERTO RICO; STUDIES TO DETERMINE POTENTIAL USE

Pub. L. 94–431, title VI, § 610, Sept. 30, 1976, 90 Stat. 1365, authorized Secretary of Defense to conduct studies with regard to possible use of military installations being closed and to make recommendations with regard to such installations, prior to repeal by Pub. L. 97–86, title IX, § 912(b), Dec. 1, 1981, 95 Stat. 1123. See section 2391 of this title.

REPORTS TO CONGRESSIONAL COMMITTEES ON FOREIGN POLICY AND MILITARY FORCE STRUCTURE

Pub. L. 94–106, title VIII, § 812, Oct. 7, 1975, 89 Stat. 540, which directed Secretary of Defense, after consultation with Secretary of State, to prepare and submit not later than January 31 of each year to Committees on Armed Services of Senate and House of Representatives a written annual report on foreign policy and military force structure of United States for next fiscal year, how such policy and force structure relate to each other, and justification for each, was repealed and restated as subsec. (e) of section 133 [now § 113] of this title by Pub. L. 97–295, §§ 1(1), 6(b).

REPORT TO CONGRESS ON SALE OR TRANSFER OF DEFENSE ARTICLES

Pub. L. 94–106, title VIII, § 813, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 95–79, title VIII, § 814, July 30, 1977, 91 Stat. 337; Pub. L. 97–252, title XI, § 1104, Sept. 8, 1982, 96 Stat. 739, which directed Secretary of Defense to report to Congress on any letter proposing to transfer $50,000,000 or more of defense articles, detailing impact of such a sale on readiness, adequacy of price for replacement, and armed forces needs and supply for each article, was repealed and restated as section 133b [now § 118] of this title by Pub. L. 97–295, §§ 1(2)(A), 6(b).

PROCUREMENT OF AIRCRAFT, MISSILES, NAVAL VESSELS, TRACKED COMBAT VEHICLES, AND OTHER WEAPONS; AUTHORIZATION OF APPROPRIATIONS FOR PROCUREMENT, RESEARCH, DEVELOPMENT, TEST, AND EVALUATION ACTIVITIES; SELECTED RESERVE OF RESERVE COMPONENTS: ANNUAL AUTHORIZATION OF PERSONNEL STRENGTH

Section 412 of Pub. L. 86–149, title IV, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, § 2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, § 610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, § 304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, § 6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, § 405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§ 505, 509, Oct. 7, 1970, 84 Stat. 912, 913; Pub. L. 92–129, title VII, § 701, Sept. 28, 1971, 85 Stat. 362; Pub. L. 92–436, title III, § 302, title VI, § 604, Sept. 26, 1972, 86 Stat. 736, 739, was repealed by Pub. L. 93–155, title VIII, § 803(b)(1), Nov. 16, 1973, 87 Stat. 615. See sections 114 to 116 of this title.

EX. ORD. NO. 12568. EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES AT NONAPPROPRIATED FUND ACTIVITIES

Ex. Ord. No. 12568, Oct. 2, 1986, 51 F.R. 35497, provided:

By the authority vested in me as President by the laws of the United States of America, including section 301 of Title 3 of the United States Code, it is ordered that the Secretary of Defense and, as designated by him for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the Military Departments, are hereby empowered to exercise the discretionary authority granted to the President by subsection 806(a)(2) of the Department of Defense Authorization Act of 1986, Public Law No. 99–145 [set out above], to give preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

RONALD REAGAN.

EX. ORD. NO. 12765. DELEGATION OF CERTAIN DEFENSE RELATED AUTHORITIES OF PRESIDENT TO SECRETARY OF DEFENSE

Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 749 of title 10 of the United States Code to assign the command without regard to rank in grade to any commissioned officer otherwise eligible to command when two or more commissioned officers of the same grade or corresponding grades are assigned to the same area, field command, or organization.

SEC. 2. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7299a(a) of title 10 of the United States Code to direct that combatant vessels and escort vessels be constructed in a Navy or private yard, as the case may be, if the requirement of the Act of March 27, 1934 (ch. 95, 48 Stat. 503) that the first and each succeeding alternate vessel of the same class be constructed in a Navy yard is inconsistent with the public interest.

SEC. 3. For vessels, and for any major component of the hull or superstructure of vessels to be constructed

or repaired for any of the armed forces, the Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7309(b) of title 10 of the United States Code to authorize exceptions to the prohibition in section 7309(a) of title 10 of the United States Code. Such exceptions shall be based on a determination that it is in the national security interest of the United States to authorize an exception. The Secretary of Defense shall transmit notice of any such determination to the Congress, as required by section 7309(b).

SEC. 4. The Secretary of Defense may redelegate the authority delegated to him by this order, in accordance with applicable law.

SEC. 5. This order shall be effective immediately.

GEORGE BUSH.

WAIVER OF LIMITATION WITH RESPECT TO END STRENGTH LEVEL OF U.S. ARMED FORCES IN JAPAN FOR FISCAL YEAR 1991

Memorandum of the President of the United States, May 14, 1991, 56 F.R. 23991, provided:

Memorandum for the Secretary of Defense

Consistent with section 8105(d)(2) of the Department of Defense Appropriation Act, 1991 (Public Law 101–511; 104 Stat. 1856) [set out above], I hereby waive the limitation in section 8105(b) which states that the end strength level for each fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year, and declare that it is in the national interest to do so.

You are authorized and directed to inform the Congress of this waiver and of the reasons for the waiver contained in the attached justification, and to publish this memorandum in the Federal Register.

GEORGE BUSH.

JUSTIFICATION PURSUANT TO SECTION 8105(d)(2) OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1991 (PUBLIC LAW NO. 101–511; 104 STAT. 1856)

In January of this year the Department of Defense signed a new Host Nation Support Agreement with the Government of Japan in which that government agreed to pay all utility and Japanese labor costs incrementally over the next five years (worth $1.7 billion). Because United States forward deployed forces stationed in Japan have regional missions in addition to the defense of Japan, we did not seek to have the Government of Japan offset all of the direct costs incurred by the United States related to the presence of all United States military personnel in Japan (excluding military personnel title costs).

CROSS REFERENCES

Annual rate of compensation of Secretary, see section 5312 of Title 5, Government Organization and Employees.

National Security Agency employment, delegation of authority for terminating, notwithstanding subsec. (d) of this section, see section 833 of Title 50, War and National Defense.

Reports to Congressional committees, policies and procedures on recall to active duty of Ready Reserve members, see section 12302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 667, 1762, 2220, 2501, 2506, 10504 of this title; title 22 section 2595a; title 50 sections 833, 1523; title 50 App. sections 2077, 2152.

§114. Annual authorization of appropriations

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

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

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

(3) procurement of tracked combat vehicles;

(4) procurement of other weapons;

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

(6) military construction;

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

(8) procurement of ammunition; or

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

unless funds therefor have been specifically authorized by law.

(b) In subsection (a)(6), the term ''military construction'' includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies), any activity to which section 2807 of this title applies, any activity to which chapter 133[1] of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2821 or 2854 of this title applies.

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

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

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

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

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

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

(Added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, §138; amended Pub. L. 94–106,

[1] See References in Text note below.

title VIII, § 801(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 94–361, title III, § 302, July 14, 1976, 90 Stat. 924; Pub. L. 96–107, title III, § 303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–342, title X, § 1001(a)(1), (b)–(d)(1), Sept. 8, 1980, 94 Stat. 1117–1119; Pub. L. 96–513, title I, § 102, title V, § 511(4), Dec. 12, 1980, 94 Stat. 2840, 2920; Pub. L. 97–22, § 2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title III, § 302, title IX, §§ 901(a), 902, 903, Dec. 1, 1981, 95 Stat. 1104, 1113, 1114; Pub. L. 97–113, title I, § 108(b), Dec. 29, 1981, 95 Stat. 1524; Pub. L. 97–214, § 4, July 12, 1982, 96 Stat. 170; Pub. L. 97–252, title IV, § 402(a), title XI, §§ 1103, 1105, Sept. 8, 1982, 96 Stat. 725, 738, 739; Pub. L. 97–295, § 1(3), (4), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–525, title XIV, § 1405(2), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99–145, title XII, § 1208, title XIV, § 1403, Nov. 8, 1985, 99 Stat. 723, 743; renumbered § 114 and amended Pub. L. 99–433, title I, §§ 101(a)(2), 110(b)(1)–(9), (11), Oct. 1, 1986, 100 Stat. 994, 1001, 1002; Pub. L. 99–661, div. A, title I, § 105(d), title XIII, § 1304(a), Nov. 14, 1986, 100 Stat. 3827, 3979; Pub. L. 100–26, § 7(j)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–180, div. A, title XII, § 1203, Dec. 4, 1987, 101 Stat. 1154; Pub. L. 101–189, div. A, title XVI, § 1602(b), Nov. 29, 1989, 103 Stat. 1597; Pub. L. 101–510, div. A, title XIV, § 1481(a)(1), Nov. 5, 1990, 104 Stat. 1704.)

HISTORICAL AND REVISION NOTES
1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
138(c)(5) ..	10:138 (note).	Aug. 5, 1974, Pub. L. 93–365, § 502, 88 Stat. 404.
138(i)	10:135 (note).	June 11, 1965, Pub. L. 89–37, § 305, 79 Stat. 128.

In subsection (c)(5), the words ''It is the sense of Congress that'' are omitted as unnecessary. The words ''Secretary of Defense'' are substituted for ''Department of Defense'' the first time it appears because the responsibility is in the head of the agency. The word ''Therefore'' is omitted as surplus. The word ''complete'' is substituted for ''full'', and the word ''personnel'' is substituted for ''manpower'' except in the phrase ''manpower requirements'', for consistency.

In subsection (i), the words ''may be . . . only if'' are substituted for ''No . . . may be . . . unless'' to use the positive voice. The words ''after June 30, 1966'' are substituted for ''after that date'' for clarity.

REFERENCES IN TEXT

Chapter 133 of this title, referred to in subsec. (b), was renumbered chapter 1803 of this title by Pub. L. 103–337, div. A, title XVI, § 1664(b)(1), Oct. 5, 1994, 108 Stat. 3010. A new chapter 133 (§ 2231) of this title was added by section 1664(b)(11) of Pub. L. 103–337.

The Arms Export Control Act, referred to in subsec. (c), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended. Chapter 5 of the Arms Export Control Act is classified generally to subchapter V (§ 2795 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (c)(2) of this section were contained in Pub. L. 101–165, title IX, § 9017, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note below, prior to repeal by Pub. L. 101–510, § 1481(a)(2).

Prior similar provisions were contained in Pub. L. 86–149, title IV, § 412, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, § 2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, § 610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, § 304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, § 6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, § 405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§ 505, 509, Oct. 7, 1970, 84 Stat. 912, 913; Pub. L. 92–129, title VII, § 701, Sept. 28, 1971, 85 Stat. 362; Pub. L. 92–436, title III, § 302, title VI, § 604, Sept. 26, 1972, 86 Stat. 736, 739, prior to repeal by Pub. L. 93–155, § 803(b)(1).

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 designated existing provisions as par. (1) and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101–189 struck out subsecs. (f) and (g) which read as follows:

''(f) The amounts of the estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress by the President under such section for any fiscal year or years and the amounts specified in all program and budget information submitted to Congress by the Department of Defense in support of such estimates and proposed appropriations shall be mutually consistent unless, in the case of each inconsistency, there is included detailed reasons for the inconsistency.

''(g) The Secretary of Defense shall submit to Congress not later than April 1 of each year, the five-year defense program (including associated annexes) used by the Secretary in formulating the estimated expenditures and proposed appropriations included in such budget to support programs, projects, and activities of the Department of Defense.''

1987—Subsec. (e). Pub. L. 100–26 redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 100–180 added subsec. (f).

Pub. L. 100–26, § 7(j)(1), redesignated subsec. (f) as (e).

Subsec. (g). Pub. L. 100–180, § 1203, added subsec. (g).

1986—Pub. L. 99–433, § 101(a)(2), renumbered section 138 of this title as this section.

Pub. L. 99–433, § 110(b)(1), struck out ''and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' at end of section catchline.

Subsec. (a)(6). Pub. L. 99–433, § 110(b)(3), struck out ''(as defined in subsection (f))'' after ''military construction''.

Subsec. (b). Pub. L. 99–433, § 110(b)(4), (5), (8), redesignated subsec. (f)(1) as (b). Former subsec. (b) redesignated section 115(a) of this title.

Subsec. (c). Pub. L. 99–661, § 1304(a), substituted ''$1,070,000,000'' for ''$1,000,000,000''.

Pub. L. 99–433, § 110(b)(4), (5), (11), redesignated subsec. (g) as (c). Former subsec. (c) redesignated section 115(b) of this title.

Subsec. (d). Pub. L. 99–433, § 110(b)(4), (5), (11), redesignated subsec. (i) as (d). Former subsec. (d) redesignated section 115(c) of this title.

Subsec. (e). Pub. L. 99–433, § 110(b)(6), (7), redesignated subsec. (e) as section 116(a) of this title.

Subsec. (f). Pub. L. 99–661, § 105(d), added subsec. (f).

Subsec. (f)(1). Pub. L. 99–433, § 110(b)(8), redesignated subsec. (f)(1) as (b).

Subsec. (f)(2). Pub. L. 99–433, § 110(b)(9), redesignated subsec. (f)(2) as section 116(b) of this title.

Subsec. (g). Pub. L. 99–433, § 110(b)(11), redesignated subsec. (g) as (c).

Subsec. (h). Pub. L. 99–433, § 110(b)(2), redesignated subsec. (h) as section 113(i) of this title.

Subsec. (i). Pub. L. 99–433, § 110(b)(11), redesignated subsec. (i) as (d).

1985—Subsec. (b)(3). Pub. L. 99–145, § 1208, added par. (3).

Subsec. (g). Pub. L. 99–145, § 1403, substituted ''$1,000,000,000'' for ''$300,000,000 in fiscal year 1982, may not exceed $600,000,000 in fiscal year 1983, and may not exceed $900,000,000 in fiscal year 1984 or any fiscal year thereafter''.

1984—Subsec. (g). Pub. L. 98–525 inserted ''(22 U.S.C. 2795 et seq.)''.

1982—Subsec. (c)(1)(A). Pub. L. 97–252, §402(a), authorized increase in fiscal year end-strength authorizations determined by the Secretary of Defense to be in the national interest.

Subsec. (c)(5). Pub. L. 97–295, §1(3), added par. (5).

Subsec. (f)(1). Pub. L. 97–214 substituted '', any activity to which section 2807 of this title applies, any activity to which chapter 133 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23'' for ''but excludes any activity to which section 2673 or 2674, or chapter 133, of this title apply, or to which section 406(a) of Public Law 85–241 (42 U.S.C. 1594i) applies'' and inserted provision that ''military construction'' does not include any activity to which section 2821 or 2854 of this title applies.

Subsec. (g). Pub. L. 97–252, §1103, limited size of Special Defense Acquisition Fund to $600,000,000 in fiscal year 1983, striking out such sum as a limit in any fiscal year thereafter, and limited size of Fund to $900,000,000 in fiscal year 1984 or any fiscal year thereafter.

Subsec. (h). Pub. L. 97–252, §1105, added subsec. (h).

Subsec. (i). Pub. L. 97–295, §1(4), added subsec. (i).

1981—Subsec. (a)(8), (9). Pub. L. 97–86, §901(a), added pars. (8) and (9).

Subsec. (b). Pub. L. 97–86, §902, designated existing provisions as par. (1), substituted ''authorize the average personnel strength'' for ''authorize the personnel strength'', and added par. (2).

Subsec. (c)(3)(D)(iii)(I). Pub. L. 97–22 struck out ''and active military service'' after ''active commissioned service''.

Subsec. (c)(4). Pub. L. 97–86, §903, added par. (4).

Subsec. (e)(3), (4). Pub. L. 97–86, §302, struck out pars. (3) and (4) which required the Secretary to include in each report a projection of the combat readiness of specified military units proposed to be maintained during the next fiscal year.

Subsec. (g). Pub. L. 97–113 added subsec. (g).

1980—Pub. L. 96–342, §1001(d)(1), substituted ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' for ''Secretary of Defense: Annual authorization of appropriations for armed forces'' in section catchline.

Subsec. (a). Pub. L. 96–342, §1001(a)(1), (b)(1), in cl. (6) substituted reference to subsec. (f) for reference to subsec. (e), and added cl. (7).

Subsec. (c)(1). Pub. L. 96–513, §102(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c)(3)(D). Pub. L. 96–513, §102(b), substituted provisions relating to expanded coverage in the annual report of the Secretary of Defense for provisions under which the report had formerly covered only the estimated requirements in members on active duty during the next fiscal year, the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year, and an analysis of the distribution by grade of commissioned officers on active duty at the time the report was prepared.

Subsec. (e). Pub. L. 96–342, §1001(b)(2), (3), added subsec. (e). Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 96–513, §511(4), substituted ''(42 U.S.C. 1594i)'' for ''(71 Stat. 556)'' in par. (1), and substituted ''In subsection (e)'' for ''In subsection (f)'' in par. (2).

Pub. L. 96–342, §1001(b)(2), (c), redesignated subsec. (e) as (f), substituted ''(1) In subsection (a)(6)'' for ''For purposes of subsection (a)(6) of this section'', and added par. (2).

1979—Subsec. (c)(3). Pub. L. 96–107 restructured existing provisions into subpars. (A) to (C) with minor changes in phraseology and added subpar. (D).

1976—Subsec. (c)(3). Pub. L. 94–361 required the report to Congress to identify, define, and group by mission and by region the types of military bases, installations, and facilities and to provide an explanation and justification of the relationship between the base structure and the proposed military force structure together with a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce the costs.

1975—Subsec. (a)(6). Pub. L. 94–106, §801(a)(1), added par. (6).

Subsec. (e). Pub. L. 94–106, §801(a)(2), added subsec. (e).

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 402(b) of Pub. L. 97–252 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to end strengths for active-duty personnel authorized for fiscal years beginning after September 30, 1981.''

Amendment by Pub. L. 97–214 applicable with respect to funds appropriated for fiscal years beginning after Sept. 30, 1983, see section 12(b) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 901(b) of Pub. L. 97–86 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 102 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511(4) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Section 1001(a)(2) of Pub. L. 96–342 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1981.''

APPLICABILITY OF PROVISIONS RELATING TO FUNDS NOT HERETOFORE REQUIRED TO BE AUTHORIZED

Section 801(b) of Pub. L. 94–106 provided that: ''The amendment provided by paragraph (2) of subsection (a) above [enacting subsec. (e) of this section] with respect to funds not heretofore required to be authorized shall only apply to funds authorized for appropriation for fiscal year 1977 and thereafter.''

AVAILABILITY OF APPROPRIATIONS

Pub. L. 101–165, title IX, §9017, Nov. 21, 1989, 103 Stat. 1133, which prohibited funding to be used for planning or executing programs which utilized amounts credited to the Department of Defense pursuant to section 2777(a) of Title 22, Foreign Relations and Intercourse, was repealed and restated in subsec. (c)(2) of this section by Pub. L. 101–510, div. A, title XIV, §1481(a), Nov. 5, 1990, 104 Stat. 1704.

The following general provisions, which had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1986, Pub. L. 99–190, §101(b) [title VIII, §§8005, 8006, 8009], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203, 1204:

''SEC. 8005. [Authorized use of appropriated funds for expenses in connection with administration of occupied areas; payment of rewards for information leading to discovery of missing naval property or recovery thereof; payment of deficiency judgments and interests thereon arising out of condemnation proceedings; leasing of buildings and facilities; payments under contracts for maintenance of tools and facilities for twelve months; maintenance of defense access roads; purchase of milk for enlisted personnel; payments under leases for real or personal property, including maintenance; purchase of right-hand-drive vehicles not to exceed $12,000 per vehicle; payment of unusual cost overruns incident to ship overhaul, maintenance, and repair;

payments from annual appropriations to industrial fund activities and/or under contract for changes in scope of ship overhaul, maintenance, and repair after expiration of such appropriations; and payments for depot maintenance contracts for twelve months; and was repealed and (except for section 8005(e)) restated in sections 2242(2), 2252, 2253(a)(2), 2389(b), 2410a, 2661(b), and 7313 of this title by Pub. L. 100–370, §1(e)(1), (h)(1), (2), (*l*)(3), (n)(1), (p)(3), July 19, 1988, 102 Stat. 844, 847, 849–851. Section 8005(c) was not restated in view of section 2676(e) of this title.]

''SEC. 8006. [Authorized use of appropriated funds for military courts, boards, and commissions; utility services for buildings erected at private cost and buildings on military reservations authorized by regulations to be used for welfare and recreational purposes; and exchange fees, and losses in accounts of disbursing officers or agents; and was repealed and restated in sections 2242(3), 2490, and 2781 of this title by Pub. L. 100–370, §1(e)(1), (j)(1), (m)(1), (p)(3), July 19, 1988, 102 Stat. 844, 848, 849, 851.]

''SEC. 8009. [Provided for exemption from apportionment requirement; exceptions for cost of airborne alerts and cost of increased military personnel on active duty; and for reports to Congress; and was repealed and restated in section 2201 of this title by Pub. L. 100–370, §1(d)(1), July 19, 1988, 102 Stat. 841.]''

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriation Act, 1984, Pub. L. 98–212, title VII, §§705–707, 723, 728, 735, 774, Dec. 8, 1983, 97 Stat. 1437, 1438, 1443, 1444, 1452:

''SEC. 705. [Authorized use of appropriated funds for insurance of official motor vehicles in foreign countries; advance payments for investigations in foreign countries; security guard services for protection of confidential files; and other necessary expenses; and was repealed and restated in sections 2241(b), 2242(1), (4), and 2253(a)(1) of this title by Pub. L. 100–370, §1(e)(1), (p)(1), July 19, 1988, 102 Stat. 844, 851.]

''SEC. 706. [Authorized use of appropriated funds for expenses incident to maintenance, pay, and allowances of prisoners of war, other persons in Army, Navy, or Air Force custody whose status was determined by Secretary concerned to be similar to prisoners of war, and persons detained in such custody pursuant to Presidential proclamation, and was repealed by Pub. L. 98–525, title XIV, §§1403(a)(1), 1404, Oct. 19, 1984, 98 Stat. 2621, effective Oct. 1, 1985. See section 956(5) of this title.]

''SEC. 707. [Authorized use of appropriated funds for acquisition of certain interests in land, and was repealed and restated in sections 2673 and 2828(h) of this title by Pub. L. 100–370, §1(*l*)(1), (2), (p)(1), July 19, 1988, 102 Stat. 849, 851.]

''SEC. 723. [Authorized use of appropriated funds for purchase of household furnishings, and automobiles from military and civilian personnel on duty outside continental United States, for purpose of resale at cost to incoming personnel, and for providing furnishings, without charge, in other than public quarters occupied by military or civilian personnel of Department of Defense on duty outside continental United States or in Alaska, and was repealed and restated in section 2251 of this title by Pub. L. 100–370, §1(e)(1), (p)(1), July 19, 1988, 102 Stat. 844, 851.]

''SEC. 728. [Prohibited use of appropriated funds for payment of costs of advertising by any defense contractor, except advertising for which payment is made from profits, provided exemptions for advertising for personnel recruitment, procurement of scarce required items, and disposal of scrap or surplus materials, and was repealed by Pub. L. 100–370, §1(p)(1), July 19, 1988, 102 Stat. 851. See section 2324(e)(1)(H) of this title.]

''SEC. 735. [Authorized use of appropriated funds for operation and maintenance of the active forces for welfare and recreation; hire of passenger motor vehicles; repair of facilities; modification of personal property; design of vessels; industrial mobilization; installation of equipment in public and private plants; military communications facilities on merchant vessels; acquisition of services, special clothing, supplies, and equipment; and expenses for the Reserve Officers' Training Corps and other units at educational institutions was amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, and was repealed and restated in sections 2241(a) and 2661(a) of this title by Pub. L. 100–370, §1(e)(1), (*l*)(3), (p)(1), July 19, 1988, 102 Stat. 844, 849, 851.]

''SEC. 774. During the current fiscal year and subsequent fiscal years, for the purposes of the appropriation 'Foreign Currency Fluctuations, Defense' the foreign currency exchange rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on this Act.''

BUDGET DETERMINATION BY DIRECTOR OF OMB

Pub. L. 102–484, div. D, title XLV, §4501, Oct. 23, 1992, 106 Stat. 2769, provided that:

''(a) REQUIREMENT FOR DETERMINATION.—An amount made available under this Act [see Tables for classification] for a program described in subsection (b) may be obligated for that program only if expenditures for that program have been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 665(a)(2)]) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

''(b) COVERED PROGRAMS.—The programs referred to in subsection (a) are the programs under title XLIII [enacting section 2552 of this title, amending section 2391 of this title, and enacting provisions set out as notes under section 2391 of this title] and subtitles D through G of title XLIV [§§4441 to 4497, enacting sections 1143a, 1151, 1598, 2410c, and 2410d of this title and section 1662d–1 of Title 29, Labor, amending sections 1142 and 1144 of this title and sections 1551, 1661, 1661c, and 1662d of Title 29, and enacting provisions set out as notes under sections 1143, 1143a, 2410d, 2501, 2504, and 2701 of this title and section 1662d–1 of Title 29].

''(c) EFFECT ON APPROPRIATIONS FOR PROGRAMS NOT COUNTED AGAINST DEFENSE CATEGORY.—(1) Not later than the third day after the date of the enactment of this Act [Oct. 23, 1992], the Director of the Office of Management and Budget shall make a determination as to the classification by discretionary spending limit category for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 [see Short Title note set out under section 900 of Title 2, The Congress] of amounts appropriated for fiscal year 1993 for each of the programs described in subsection (b). If the Director determines that any such amount shall not classify against the defense category, then the President shall submit to Congress a report listing all such amounts that the Director has determined will not classify against the defense category (as described in subsection (a)). Such report shall contain an explanation for each such determination.

''(2) All amounts listed in the report under paragraph (1) may be transferred only to the programs under titles XLII, XLIII, and XLIV [see Tables for classification] that are classified against the defense category by virtue of the report of the President submitted under paragraph (1) pursuant to amounts specified in appropriation Acts. Any such transfer shall be taken into account for purposes of calculating all reports under section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 904].''

CLASSIFIED ANNEX

Pub. L. 103–337, div. A, title X, §1003, Oct. 5, 1994, 108 Stat. 2834, provided that:

''(a) STATUS OF CLASSIFIED ANNEX.—The Classified Annex prepared by the committee of conference to ac-

company the bill S. 2182 of the One Hundred Third Congress [Pub. L. 103–337] and transmitted to the President is hereby incorporated into this Act [see Tables for classification].

''(b) CONSTRUCTION WITH OTHER PROVISIONS OF ACT.—The amounts specified in the Classified Annex are not in addition to amounts authorized to be appropriated by other provisions of this Act.

''(c) LIMITATION ON USE OF FUNDS.—Funds appropriated pursuant to an authorization contained in this Act that are made available for a program, project, or activity referred to in the Classified Annex may only be expended for such program, project, or activity in accordance with such terms, conditions, limitations, restrictions, and requirements as are set out for that program, project, or activity in the Classified Annex.

''(d) DISTRIBUTION OF CLASSIFIED ANNEX.—The President shall provide for appropriate distribution of the Classified Annex, or of appropriate portions of the annex, within the executive branch of the Government.''

Pub. L. 103–335, title VIII, §8084, Sept. 30, 1994, 108 Stat. 2637, provided that: ''The classified Annex prepared by the Committee on Appropriations to accompany the report on the Department of Defense Appropriations Act, 1995 [Pub. L. 103–335] is hereby incorporated into this Act [see Tables for classification]: *Provided*, That the amounts specified in the classified Annex are not in addition to amounts appropriated by other provisions of this Act: *Provided further*, That the President shall provide for appropriate distribution of the classified Annex, or of appropriate portions of the classified Annex, within the executive branch of the Government.''

Similar provisions were contained in the following prior authorization and appropriation acts:

Pub. L. 103–160, div. A, title XI, §1103, Nov. 30, 1993, 107 Stat. 1749.

Pub. L. 103–139, title VIII, §8108, Nov. 11, 1993, 107 Stat. 1464.

Pub. L. 102–484, div. A, title X, §1006, Oct. 23, 1992, 106 Stat. 2482.

Pub. L. 102–396, title IX, §9126, Oct. 6, 1992, 106 Stat. 1931.

Pub. L. 102–190, div. A, title X, §1005, Dec. 5, 1991, 105 Stat. 1457.

Pub. L. 102–172, title VIII, §8124, Nov. 26, 1991, 105 Stat. 1206.

Pub. L. 101–511, title VIII, §8111, Nov. 5, 1990, 104 Stat. 1904.

Pub. L. 101–510, div. A, title XIV, §1409, Nov. 5, 1990, 104 Stat. 1681.

BUDGET ACT LIMITATION

Section 1304(b) of Pub. L. 99–661 provided that: ''New spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)]) provided by the amendment made by subsection (a) [amending this section] shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.''

LIMITATION ON SOURCE OF FUNDS FOR NICARAGUAN DEMOCRATIC RESISTANCE

Section 1351 of Pub. L. 99–661 provided that:

''(a) LIMITATION.—Notwithstanding title II of the Military Construction Appropriations Act, 1987 [Pub. L. 99–500, §101(k) [title II], Oct. 18, 1986, 100 Stat. 1783–287, 1783–295, and Pub. L. 99–591, §101(k) [title II], Oct. 30, 1986, 100 Stat. 3341–287, 3341–295], or any other provision of law, funds appropriated or otherwise made available to the Department of Defense for any fiscal year for operation and maintenance may not be used to provide assistance for the democratic resistance forces in Nicaragua. If funds appropriated or otherwise made available to the Department of Defense for any fiscal year are authorized by law to be used for such assistance, funds for such purpose may only be derived from amounts appropriated or otherwise made available to the Department for procurement (other than ammunition).

''(b) REPORT.—Before funds appropriated or otherwise made available to the Department of Defense are released to be used for the purpose described in subsection (a), the Secretary of Defense shall submit to Congress a report describing the specific source of such funds.''

USE OF APPROPRIATED FUNDS TO SUPPORT REVENUE GENERATING ACTIVITIES IN LARGE METROPOLITAN AREAS PROHIBITED

Pub. L. 99–500, §101(c) [title IX, §9102], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, and Pub. L. 99–591, §101(c) [title IX, §9102], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, which provided that after Sept. 30, 1987, no appropriated funds could be used to support revenue generating morale, welfare, and recreation activities in large metropolitan areas, was repealed by Pub. L. 100–202, §101(b) [title VIII, §8099], Dec. 22, 1987, 101 Stat. 1329–43, 1329–78.

TRANSFER OF OPERATION AND MAINTENANCE APPROPRIATIONS UNOBLIGATED BALANCES TO FOREIGN CURRENCY FLUCTUATIONS, DEFENSE, APPROPRIATION

Pub. L. 97–377, title I, §101(c) [title VII, §791], Dec. 21, 1982, 96 Stat. 1865, provided that: ''No later than the end of the second fiscal year following the fiscal year for which appropriations for Operation and Maintenance have been made available to the Department of Defense, unobligated balances of such appropriations provided for fiscal year 1982 and thereafter may be transferred into the appropriation 'Foreign Currency Fluctuations, Defense' to be merged with and available for the same time period and the same purposes as the appropriation to which transferred: *Provided*, That any transfer made pursuant to any use of the authority provided by this provision shall be limited so that the amount in the appropriation 'Foreign Currency Fluctuations, Defense' does not exceed $970,000,000 at the time such a transfer is made.''

WAIVER OF APPLICABILITY OF OMB CIRCULAR A–76 TO CONTRACTING OUT OF CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Section 802 of Pub. L. 96–107 provided that:

''(a) Except as provided in subsection (b), neither the implementing instructions for, nor the provisions of, Office of Management and Budget Circular A–76 (issued on August 30, 1967, and reissued on October 18, 1976, June 13, 1977, and March 29, 1979) shall control or be used for policy guidance for the obligation or expenditure of any funds which under section 138(a)(2) [now 114(a)(2)] of title 10, United States Code, are required to be specifically authorized by law.

''(b) Funds which under section 138(a)(2) [now 114(a)(2)] of title 10, United States Code, are required to be specifically authorized by law may be obligated or expended for operation or support of installations or equipment used for research and development (including maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships) in compliance with the implementing instructions for and the provisions of such Office of Management and Budget Circular.

''(c) No law enacted after the date of the enactment of this Act [Nov. 9, 1979] shall be held, considered, or construed as amending, superseding, or otherwise modifying any provision of this section unless such law does so by specifically and explicitly amending, repealing, or superseding this section.''

MANPOWER CONVERSION POLICIES; DEVELOPMENT FOR ANNUAL MANPOWER AUTHORIZATION REQUESTS; JUSTIFICATION FOR CONVERSION TO BE CONTAINED IN ANNUAL MANPOWER REQUIREMENTS REPORT TO CONGRESS

Pub. L. 93–365, title V, §502, Aug. 5, 1974, 88 Stat. 404, which provided that it was the sense of Congress that

the Department of Defense use the least costly form of manpower consistent with military requirements and other needs of the Department of Defense, that in developing the annual manpower authorization requests to the Congress and in carrying out manpower policies, the Secretary of Defense was to consider the advantages of converting from one form of manpower to another (military, civilian, or private contract) for the performance of a specified job, and that a full justification of any conversion from one form of manpower to another be contained in the annual manpower requirements report to the Congress required by subsec. (c)(3) of this section, was repealed and restated as subsec. (c)(5) of this section by Pub. L. 97–295, §§1(3), 6(b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 113, 403, 2431, 2551, 2608 of this title; title 22 section 2795.

[§ 114a. Renumbered § 221]

§ 115. Personnel strengths: requirement for annual authorization

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

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

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

(3) The average military training student loads for each of the armed forces (other than the Coast Guard).

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

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

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

(3) training military personnel in the training categories described in subsection (f) of any of the armed forces (other than the Coast Guard) unless the average student load of that armed force for that fiscal year has been authorized by law.

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

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 0.5 percent of that end strength; and

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

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

(1) Members of the Ready Reserve ordered to active duty under section 673[1] of this title.

(2) Members of the Selected Reserve of the Ready Reserve ordered to active duty under section 673b[1] of this title.

(3) Members of the National Guard called into Federal service under section 3500[1] or 8500[1] of this title.

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

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

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

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

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

(f) Authorization under subsection (a)(3) is not required for unit or crew training student loads, but is required for student loads for the following individual training categories:

(1) Recruit and specialized training.

(2) Flight training.

(3) Professional training in military and civilian institutions.

(4) Officer acquisition training.

(Added Pub. L. 101–510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1710; amended Pub. L. 102–190, div. A, title III, §312(a), Dec. 5, 1991, 105 Stat. 1335.)

REFERENCES IN TEXT

Sections 673 and 673b of this title, referred to in subsec. (d)(1), (2), were renumbered sections 12302 and 12304 of this title, respectively, by Pub. L. 103–337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.

Sections 3500 and 8500 of this title, referred to in subsec. (d)(3), were repealed by Pub. L. 103–337, div. A, title XVI, §1662(f)(2), Oct. 5, 1994, 108 Stat. 2994, and reenacted by section 1662(f)(1) thereof as section 12406 of this title.

PRIOR PROVISIONS

A prior section 115, added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, §138(b)–(d); amended Pub. L. 94–361, title III, §302, July 14, 1976, 90 Stat. 924; Pub. L. 96–107, title III, §303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title I, §102, Dec. 12, 1980, 94 Stat. 2840; Pub. L. 97–22, §2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title IX, §§902, 903, Dec. 1, 1981, 95 Stat. 1113, 1114; Pub. L. 97–252, title IV, §402(a), Sept. 8, 1982, 96 Stat. 725; Pub. L. 97–295, §1(3), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 99–145, title XII, §1208, Nov. 8, 1985, 99 Stat. 723; renumbered §115 Pub. L. 99–433, title I, §§101(a)(2), 110(b)(4), (5), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 99–661, div. A, title IV, §§411(c) [(d)], 413, Nov. 14, 1986, 100 Stat. 3861, 3862; Pub. L. 100–26, §7(j)(2), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–456, div. A, title VI, §641, Sept. 29, 1988, 102 Stat. 1987, related to annual authorization of personnel strengths and annual manpower requirements reports, prior to repeal and reenactment as sections 115, 115a, 115b [now 10541], 123a, and 129a of this title by Pub. L. 101–510, §1483(a), (b).

AMENDMENTS

1991—Subsec. (a)(4). Pub. L. 102–190, §312(a)(1), struck out par. (4) which read as follows: ''The end strength for

[1] See References in Text note below.

civilian personnel for each component of the Department of Defense.''

Subsec. (b)(2) to (4). Pub. L. 102–190, §312(a)(2), inserted ''or'' at end of par. (2), substituted a period for ''; or'' at end of par. (3), and struck out par. (4) which read as follows: ''the use of the civilian personnel of any component of the Department of Defense unless the end strength for civilian personnel of that component for that fiscal year has been authorized by law.''

EFFECT OF RESERVE COMPONENT ON COMPUTATION OF END STRENGTH LIMITATION FOR ACTIVE FORCES FOR FISCAL YEAR 1995

Pub. L. 103–337, div. A, title XIII, §1316(c), Oct. 5, 1994, 108 Stat. 2899, provided that:

''(1) A member of a reserve component described in paragraph (2) shall not be counted (under section 115(a)(1) of title 10, United States Code) against the applicable end strength limitation for members of the Armed Forces on active duty for fiscal year 1995 prescribed in section 401 [set out below].

''(2) Paragraph (1) applies in the case of a member of a reserve component who is on active duty under a call or order to active duty for 180 days or more for activities under section 168 of title 10, United States Code, as added by subsection (a).''

END STRENGTHS FOR ACTIVE FORCES

Pub. L. 103–337, div. A, title IV, §401, Oct. 5, 1994, 108 Stat. 2743, provided that: ''The Armed Forces are authorized strengths for active duty personnel as of September 30, 1995, as follows:

''(1) The Army, 510,000.

''(2) The Navy, 441,641.

''(3) The Marine Corps, 174,000.

''(4) The Air Force, 400,051.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 103–160, div. A, title IV, §§401, 403, Nov. 30, 1993, 107 Stat. 1639, 1640.

Pub. L. 102–484, div. A, title IV, §§401, 402, Oct. 23, 1992, 106 Stat. 2397.

Pub. L. 102–190, div. A, title IV, §401, title VI, §664, Dec. 5, 1991, 105 Stat. 1349, 1399.

Pub. L. 101–510, div. A, title IV, §§401, 402, Nov. 5, 1990, 104 Stat. 1543, 1544; Pub. L. 102–25, title II, §§201(a), 202, 205(a), Apr. 6, 1991, 105 Stat. 79, 80.

Pub. L. 101–189, div. A, title IV, §401, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, §401(d), Nov. 5, 1990, 104 Stat. 1544.

Pub. L. 100–456, div. A, title IV, §401, Sept. 29, 1988, 102 Stat. 1963.

Pub. L. 100–180, div. A, title IV, §401, Dec. 4, 1987, 101 Stat. 1081.

Pub. L. 99–661, div. A, title IV, §401, Nov. 14, 1986, 100 Stat. 3859.

Pub. L. 99–145, title IV, §401, Nov. 8, 1985, 99 Stat. 618.

Pub. L. 98–525, title IV, §401, Oct. 19, 1984, 98 Stat. 2516.

Pub. L. 98–94, title IV, §401, Sept. 24, 1983, 97 Stat. 629.

Pub. L. 97–252, title IV, §401, Sept. 8, 1982, 96 Stat. 725.

Pub. L. 97–86, title IV, §401, Dec. 1, 1981, 95 Stat. 1104, as amended by Pub. L. 97–252, title IX, §903, Sept. 8, 1982, 96 Stat. 729.

Pub. L. 96–342, title III, §301, Sept. 8, 1980, 94 Stat. 1082, as amended by Pub. L. 97–39, title III, §301, Aug. 14, 1981, 95 Stat. 940.

Pub. L. 96–107, title III, §301, Nov. 9, 1979, 93 Stat. 806.

Pub. L. 95–485, title III, §301, Oct. 20, 1978, 92 Stat. 1613.

Pub. L. 95–79, title III, §301, July 30, 1977, 91 Stat. 326.

Pub. L. 94–361, title III, §301, July 14, 1976, 90 Stat. 924.

Pub. L. 94–106, title III, §301, Oct. 7, 1975, 89 Stat. 532.

Pub. L. 93–365, title III, §301, Aug. 5, 1974, 88 Stat. 401.

Pub. L. 93–155, title III, §301, Nov. 16, 1973, 87 Stat. 607.

Pub. L. 92–436, title III, §301, Sept. 26, 1972, 86 Stat. 735.

MINIMUM NUMBER OF NAVY HEALTH PROFESSIONS OFFICERS

Section 718(b) of Pub. L. 102–190 provided that: ''Of the total number of officers authorized to be serving on active duty in the Navy on the last day of a fiscal year, 12,510 shall be available only for assignment to duties in health profession specialties.''

LIMITATIONS ON REDUCTIONS IN MEDICAL PERSONNEL

Section 711 of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title VII, §718(a), Dec. 5, 1991, 105 Stat. 1404, provided that:

''(a) LIMITATION ON REDUCTION.—The Secretary of Defense may not reduce the number of medical personnel of the Department of Defense below the baseline number unless the Secretary of Defense—

''(1) certifies to the Congress that—

''(A) the number of such personnel being reduced is excess to the current and projected needs of the military departments; and

''(B) such reduction will not result in an increase in the cost of health care services provided under the Civilian Health and Medical Program of the Uniformed Services; and

''(2) in the case of military medical personnel, includes in the certification the information specified in subsection (b).

''(b) INFORMATION REQUIRED.—A certification made by the Secretary of Defense in compliance with subsection (a)(2) shall include the following:

''(1) The strength levels for the individual category of medical personnel involved in the reduction as of September 30, 1989.

''(2) The projected requirements of the Department of Defense over the five-fiscal year period following the fiscal year in which the certification is submitted for medical personnel in the category of medical personnel involved in the reduction.

''(3) The strength level recommended for each component of the Armed Forces for the most recent fiscal year for which the Secretary submitted recommendations pursuant to section 115a(g)(1) of title 10, United States Code (as added by section 1483), for personnel in the category of medical personnel involved in the reduction.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'medical personnel' has the meaning given that term in section 115a(g)(2) of title 10, United States Code (as added by section 1483), except that such term includes civilian personnel of the Department of Defense assigned to military medical facilities.

''(2) The term 'category of medical personnel' means—

''(A) each corps referred to in subparagraphs (A) and (C) of section 115a(g)(2) of such title (as added by section 1483);

''(B) each designation referred to in subparagraph (B) of such section;

''(C) the enlisted personnel referred to in subparagraph (D) of such section; and

''(D) other medical personnel designated as medical personnel by the Secretary pursuant to subparagraph (E) of such section, if any.

''(3) The term 'baseline number' means the number equal to the sum of 12,510 and the number of medical personnel of the Department of Defense serving on September 30, 1989, excluding commissioned officers of the Navy.''

OPERATION DESERT SHIELD INCREASE IN END STRENGTHS OF ACTIVE DUTY PERSONNEL; AUTHORITY; CERTIFICATION

Section 1117 of Pub. L. 101–510, which authorized Secretary of Defense, after determining that operational requirements of Operation Desert Shield so require, to increase the end strengths of active duty personnel for fiscal year 1991 by an amount not greater than 0.5 percent of the total end strengths authorized by section 401 of Pub. L. 101–510, set out above, and required certification by Secretary to Committees on Armed Services of Senate and House of Representatives of necessity of such increase, was repealed by Pub. L. 102–25, title II, §204, Apr. 6, 1991, 105 Stat. 80.

CROSS REFERENCES

Reserve components named, see section 10101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8062, 16132 of this title.

§ 115a. Annual manpower requirements report

(a) The Secretary of Defense shall submit to Congress, not later than February 15 of each fiscal year, an annual manpower requirements report. The report shall be in writing and shall contain the Secretary's recommendations for—

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

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

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

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

(A) Unit mission and capability.

(B) Strategy which the unit supports.

(C) Area of deployment and illustrative areas of potential deployment, including a description of any United States commitment to defend such areas.

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

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

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

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

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

(d) In each such report, the Secretary shall also—

(1) identify, define, and group by mission and by region the types of military bases, installations, and facilities;

(2) provide an explanation and justification of the relationship between this base structure and the proposed military force structure; and

(3) provide a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce those costs.

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

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

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

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

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

(B) discharges;

(C) other separations;

(D) deaths;

(E) promotions; and

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

(4) An analysis of the distribution of each of the following categories of officers serving on active duty on the last day of the preceding fiscal year by grade in which serving and years of active commissioned service:

(A) Regular officers.

(B) Reserve officers on the active-duty list.

(C) Reserve officers described in clauses (B) and (C) of section 523(b)(1) of this title.

(D) Officers other than those specified in subparagraphs (A), (B), and (C) serving in a temporary grade.

(5) An analysis of the number of officers and enlisted members serving on active duty for training as of the last day of the preceding fiscal year under orders specifying an aggregate period in excess of 180 days and an estimate for the current fiscal year of the number that will be ordered to such duty, tabulated by—

(A) recruit and specialized training;

(B) flight training;

(C) professional training in military and civilian institutions; and

(D) officer acquisition training.

(f) In each such report, the Secretary shall also include recommendations for the average student load for each category of training for each component of the armed forces for the next three fiscal years. The Secretary shall include in the report justification for, and explanation of, the average student loads recommended.

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

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

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

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

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

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

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

(Added Pub. L. 101–510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1711; amended Pub. L. 102–190, div. A, title X, §1061(a)(1), Dec. 5, 1991, 105 Stat. 1472.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(1)(D), (3), (c)(2) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

AMENDMENTS

1991—Subsec. (d)(3). Pub. L. 102–190 inserted ''provide'' before ''a comprehensive''.

ASSESSMENT OF STRUCTURE AND MIX OF ACTIVE AND RESERVE FORCES

Section 402 of Pub. L. 102–190, as amended by Pub. L. 102–484, div. A, title V, §513(b), Oct. 23, 1992, 106 Stat. 2406, required Secretary of Defense to submit to Congress a report containing an assessment of alternatives relating to structure and mix of active and reserve forces appropriate for carrying out assigned missions in mid- to late-1990s and an evaluation and recommendations of Secretary and Chairman of Joint Chiefs of Staff as to mix or mixes of reserve and active forces considered acceptable to carry out expected future missions, and further provided for matters to be included in report and evaluation, commencement of assessment, submission of interim and final reports, and funding for assessment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 129a of this title.

[§115b. Renumbered §10541]

§116. Annual operations and maintenance report

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

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

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

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

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

(b) In this section:

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

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

(Added Pub. L. 96–342, title X, §1001(b)(3), (c)(2), Sept. 8, 1980, 94 Stat. 1118, 1119, §138(e), (f)(2); amended Pub. L. 96–513, title V, §511(4)(B), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title III, §302, Dec. 1, 1981, 95 Stat. 1104; renumbered §116 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(b)(6), (7), (9), (10), Oct. 1, 1986, 100 Stat. 994, 1002.)

AMENDMENTS

1986—Pub. L. 99–433 successively redesignated subsecs. (e) and (f)(2) of section 138 of this title as subsecs. (e) and (f)(2) of section 114 of this title and then as subsecs. (a) and (b), respectively, of this section, added section catchline, and made minor conforming changes in text.

1981—Subsec. (a)(3), (4), formerly §138(e)(3), (4). Pub. L. 97–86 struck out pars. (3) and (4) which required the Secretary to include in each report a projection of the combat readiness of specified military units proposed to be maintained during the next fiscal year.

1980—Subsec. (b), formerly §138(f)(2). Pub. L. 96–513 substituted ''In subsection (e)'' for ''In subsection (f)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

[§§117, 118. Repealed. Pub. L. 101–510, div. A, title XIII, §1301(1), (2), Nov. 5, 1990, 104 Stat. 1668]

Section 117, added Pub. L. 97–295, §1(2)(A), Oct. 12, 1982, 96 Stat. 1287, §133a; renumbered §117 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(d)(3), Oct. 1, 1986, 100 Stat. 994, 1002, required annual report on North Atlantic Treaty Organization readiness.

Section 118, added Pub. L. 97–295, §1(2)(A), Oct. 12, 1982, 96 Stat. 1288, §133b; renumbered §118, Pub. L. 99–433, title I, §101(a)(2), Oct. 1, 1986, 100 Stat. 994, required reports to Congress on sales or transfers of defense articles.

§119. Special access programs: congressional oversight

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

(2) Each such report shall set forth—

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

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

(i) a brief description of the program;

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

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

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

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

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

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

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

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

(B) justification for such designation.

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

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

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

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

(c)(1) Whenever a change in the classification of a special access program of the Department of Defense is planned to be made or whenever classified information concerning a special access program of the Department of Defense is to be declassified and made public, the Secretary of Defense shall submit to the defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

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

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

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

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

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

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

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

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

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

(1) the Committees on Armed Services and Appropriations of the Senate and House of Representatives; and

(2) the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives.

(Added Pub. L. 100–180, div. A, title XI, § 1132(a)(1), Dec. 4, 1987, 101 Stat. 1151; amended Pub. L. 101–510, div. A, title XIV, §§ 1461, 1482(a), Nov. 5, 1990, 104 Stat. 1698, 1709.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510, § 1461(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Whenever a change is made in the status of a program of the Department of Defense as a special access program, the Secretary of Defense shall submit to the defense committees a report describing the change. Any such report shall be submitted not later than 30 days after the date on which the change takes effect.''

Subsec. (f). Pub. L. 101–510, § 1482(a)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 101–510, § 1461(b), inserted ''and Appropriations'' after ''Armed Services'' in par. (1).

Subsec. (g). Pub. L. 101–510, § 1482(a)(1), redesignated subsec. (f) as (g).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of

House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1482(d) of Pub. L. 101–510 provided that: ''The amendments made by this section [enacting section 2214 of this title and amending this section and section 1584 of this title] shall take effect on October 1, 1991.''

INITIAL REPORTS ON SPECIAL ACCESS PROGRAMS

Section 1132(b), (c) of Pub. L. 100–180 provided that:

''(b) FIVE-YEAR REFERENCE AMOUNTS.—The first report under subsection (a) of section 119 of title 10, United States Code (as added by subsection (a)), shall set forth—

''(1) the total amount requested in the President's budget for each of the five previous fiscal years for special access programs of the Department of Defense that were included in the budget; and

''(2) the total amount appropriated for each such year for such programs.

''(c) INITIAL REPORT ON SPECIAL ACCESS PROGRAM DESIGNATIONS.—The first report under subsection (b) of section 119 of title 10, United States Code (as added by subsection (a)), shall cover each existing special access program.''

CHAPTER 3—GENERAL POWERS AND FUNCTIONS

Sec.
121. Regulations.
122. Official registers.
123. Suspension of certain provisions of law relating to reserve commissioned officers.
123a. Suspension of end-strength limitations in time of war or national emergency.
123b. Forces stationed abroad: limitation on number.
124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency.
125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition.
126. Transfer of funds and employees.
127. Emergency and extraordinary expenses.
127a. Expenses for contingency operations.
128. Physical protection of special nuclear material: limitation on dissemination of unclassified information.
129. Prohibition of certain civilian personnel management constraints.
129a. General personnel policy.
129b. Experts and consultants: authority to procure services of.
130. Authority to withhold from public disclosure certain technical data.

AMENDMENT OF ANALYSIS

Pub. L. 103–337, div. A, title XVI, §§1671(b)(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 3013, 3026, provided for amendment of analysis effective Oct. 1, 1996, by striking out item 123 and inserting in lieu thereof ''123. Authority to suspend officer personnel laws during war or national emergency.''

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XIII, §1312(a)(2), Oct. 5, 1994, 108 Stat. 2894, which directed amendment of table of sections by adding item 123b at end, was executed by adding item 123b after item 123a to reflect the probable intent of Congress.

1993—Pub. L. 103–160, div. A, title XI, §1108(a)(2), Nov. 30, 1993, 107 Stat. 1752, added item 127a.

1990—Pub. L. 101–510, div. A, title XIV, §§1481(b)(2), 1483(c)(2), Nov. 5, 1990, 104 Stat. 1705, 1715, added items 123a, 129a, and 129b.

1989—Pub. L. 101–189, div. A, title XII, §1202(a)(2), Nov. 29, 1989, 103 Stat. 1563, added item 124.

1987—Pub. L. 100–180, div. A, title XI, §1123(b), Dec. 4, 1987, 101 Stat. 1150, added item 128.

Pub. L. 100–26, §9(b)(1), Apr. 21, 1987, 101 Stat. 287, struck out item 128 ''Funds transfers for foreign cryptologic support''.

1986—Pub. L. 99–433, title I, §110(c)(2), (e)(1), title II, §211(c)(2), Oct. 1, 1986, 100 Stat. 1002, 1003, 1017, inserted ''and Functions'' after ''General Powers'' in chapter heading, struck out item 124 ''Combatant commands: establishment; composition; functions; administration and support'', and added items 127 to 130.

1962—Pub. L. 87–651, title II, §201(b), Sept. 7, 1962, 76 Stat. 517, added items 124 to 126.

1958—Pub. L. 85–861, §1(2)(B), Sept. 2, 1958, 72 Stat. 1437, added items 122 and 123.

§121. Regulations

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

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
121	[No source].	[No source].

The revised section is inserted to make express the President's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

CROSS REFERENCES

Authority and direction of President—
Chairman of Joint Chiefs of Staff, see section 152 of this title.
Joint Chiefs of Staff, see section 151 of this title.
Imperative regulations—
Annuities based on retired or retainer pay, see section 1444 of this title.
Organization, discipline, and government of National Guard, see section 110 of Title 32, National Guard.
Permissive regulations—
Commanding officer's non-judicial punishment, see section 815 of this title.
Discipline of Marine Corps, see section 6012 of this title.
Government of the Army or Air Force, see sections 3061, 8061 of this title.
Uniform Code of Military Justice, see section 836 of this title.
Uniform Code of Military Justice, delegation of authority vested in President, see section 940 of this title.

§122. Official registers

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

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
122	10 App.:20b. 34 App.:609.	July 24, 1956, ch. 677, §1, 70 Stat. 623.

§ 123. Suspension of certain provisions of law relating to reserve commissioned officers

(a) In time of war, or of national emergency declared by Congress, the President may suspend the operation of any provision of the following sections[1] of this title with respect to any armed force: 281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence), 3353, 3354, 3359, 3360, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3375, 3378, 3380, 3382, 3383, 3384, 3385, 3386, 3388, 3389, 3390, 3392, 3393, 3819, 3820(c), 3843, 3844, 3845, 3846, 3848, 3850, 3851, 3852, 3853, 3854, 3855, 5414, 5457, 5458, 5506, 5600, 5665, 5891, 5892, 5893, 5894, 5895, 5896, 5897, 5898, 5899, 5900, 5901, 5902, 5903, 5904, 5905, 5906, 5908, 5909, 5910, 5911, 6389, 6391, 6397, 6403, 6410, 8217, 8218, 8219, 8353, 8354, 8358, 8359, 8360, 8361, 8362, 8363, 8365, 8366, 8367, 8368, 8371, 8372, 8373, 8374, 8375, 8376, 8377, 8378, 8379, 8380, 8381, 8392, 8393, 8819, 8843, 8844, 8845, 8846, 8848, 8850, 8851, 8852, 8853, and 8855.

(b) If a provision is so suspended, the Secretary of Defense shall, before the end of that suspension, recommend to Congress legislation necessary to adjust the grades of reserve commissioned officers other than commissioned warrant officers. So far as practicable, this legislation shall be the same as that recommended for adjusting the grades of officers of the regular component of the armed force concerned.

(Added Pub. L. 85–861, § 1(2)(A), Sept. 2, 1958, 72 Stat. 1437; amended Pub. L. 86–559, § 1(1), June 30, 1960, 74 Stat. 264; Pub. L. 89–718, § 1, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(1), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, §§ 501(3), 511(1), Dec. 12, 1980, 94 Stat. 2907, 2920; Pub. L. 97–22, § 10(b)(1), July 10, 1981, 95 Stat. 137; Pub. L. 103–337, div. A, title XVI, § 1622(a), Oct. 5, 1994, 108 Stat. 2961.)

Amendment of Section

Pub. L. 103–337, div. A, title XVI, §§ 1622(a), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, provided that, effective Oct. 1, 1996, this section is amended to read as follows:

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

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

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

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

Historical and Revision Notes

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
123	50:1199 (less applicability to National Guard).	Sept. 3, 1954, ch. 1257, § 209 (less applicability to National Guard), 68 Stat. 1152.

In subsection (b), the words ''the same as'' are substituted for the word ''comparable'', since any necessary differences in the recommended legislation between Reserves and Regulars are fully taken account of in the words ''So far as practicable''.

References in Text

Section 281 of this title, referred to in subsec. (a), was repealed by Pub. L. 103–337, div. A, title XVI, § 1661(a)(2)(A), Oct. 5, 1994, 108 Stat. 2979. See section 10214 of this title.

Section 592 of this title, referred to in subsec. (a), was renumbered section 12202 of this title by Pub. L. 103–337, div. A, title XVI, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.

Sections 1002, 1005, 1006, and 1007 of this title, referred to in subsec. (a), were renumbered sections 12642, 12645, 12646, and 12647 of this title, respectively, by Pub. L. 103–337, div. A, title XVI, § 1662(h)(2), Oct. 5, 1994, 108 Stat. 2996.

Section 1374 of this title, referred to in subsec. (a), was repealed by Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006. See sections 12771, 12772, and 12773 of this title.

Sections 3217, 3218, 3219, 3220, 5414, 5457, 5458, 8217, 8218, and 8219 of this title, referred to in subsec. (a), were repealed by Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988. See sections 12003 to 12005 and 12007 of this title.

Section 3352 of this title, referred to in subsec. (a), was renumbered section 12213 of this title by Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990.

Section 5506 of this title, referred to in subsec. (a), was repealed by Pub. L. 103–337, div. A, title XVI, § 1673(d)(1), Oct. 5, 1994, 108 Stat. 3016.

Amendments

1981—Subsec. (a). Pub. L. 97–22 struck out references to sections 3494 and 8494.

1980—Subsec. (a). Pub. L. 96–513 struck out references to sections 3571, 3847, 5867, 8370, 8571, and 8847.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 3391.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to section 5907.

1960—Subsec. (a). Pub. L. 86–559 inserted references to sections 281, 3855, and 8855 and struck out references to sections 3841, 3842, 3849, 8841, 8842, and 8849.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

Effective Date of 1981 Amendment

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

[1] See References in Text note below.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(3) of Pub. L. 96–513, striking out references to sections 3571, 5867, and 8571, effective Sept. 15, 1981, and amendment by section 511(1) of Pub. L. 96–513, striking out references to sections 3847, 8370, and 8847, effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

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

If at the end of any fiscal year there is in effect a war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense. Any such deferral may not extend beyond November 30 of the following fiscal year.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(1), Nov. 5, 1990, 104 Stat. 1715.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(4) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

§123b. Forces stationed abroad: limitation on number

(a) END-STRENGTH LIMITATION.—No funds appropriated to the Department of Defense may be used to support a strength level of members of the armed forces assigned to permanent duty ashore in nations outside the United States at the end of any fiscal year at a level in excess of 203,000.

(b) EXCEPTION FOR WARTIME.—Subsection (a) does not apply in the event of a declaration of war or an armed attack on any member nation of the North Atlantic Treaty Organization, Japan, the Republic of Korea, or any other ally of the United States.

(c) PRESIDENTIAL WAIVER.—The President may waive the operation of subsection (a) if the President declares an emergency. The President shall immediately notify Congress of any such waiver.

(Added Pub. L. 103–337, div. A, title XIII, §1312(a)(1), Oct. 5, 1994, 108 Stat. 2894.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102–484, div. A, title XIII, §1302, Oct. 23, 1992, 106 Stat. 2545, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 103–337, §1312(c).

EFFECTIVE DATE

Section 1312(b) of Pub. L. 103–337 provided that: ''Section 123b of title 10, United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996.''

§124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency

(a) LEAD AGENCY.—(1) The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.

(2) The responsibility conferred by paragraph (1) shall be carried out in support of the counter-drug activities of Federal, State, local, and foreign law enforcement agencies.

(b) PERFORMANCE OF DETECTION AND MONITORING FUNCTION.—(1) To carry out subsection (a), Department of Defense personnel may operate equipment of the Department to intercept a vessel or an aircraft detected outside the land area of the United States for the purposes of—

(A) identifying and communicating with that vessel or aircraft; and

(B) directing that vessel or aircraft to go to a location designated by appropriate civilian officials.

(2) In cases in which a vessel or an aircraft is detected outside the land area of the United States, Department of Defense personnel may begin or continue pursuit of that vessel or aircraft over the land area of the United States.

(c) UNITED STATES DEFINED.—In this section, the term ''United States'' means the land area of the several States and any territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title XII, §1202(a)(1), Nov. 29, 1989, 103 Stat. 1563; amended Pub. L. 102–190, div. A, title X, §1088(b), Dec. 5, 1991, 105 Stat. 1485.)

PRIOR PROVISIONS

A prior section 124, added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 514; amended Pub. L. 98–525, title XIII, §1301(a), Oct. 19, 1984, 98 Stat. 2611; Pub. L. 99–145, title XIII, §1303(a)(1), Nov. 8, 1985, 99 Stat. 738, related to establishment, composition, and functions of combatant commands, prior to repeal by Pub. L. 99–433, §211(c)(1). See section 161 et seq. of this title.

Similar provisions were contained in Pub. L. 100–456, div. A, title XI, §1102, Sept. 29, 1988, 102 Stat. 2042, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–189, §1202(b).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN

Pub. L. 102–484, div. A, title X, §1043, Oct. 23, 1992, 106 Stat. 2492, provided that:

''(a) REQUIREMENTS OF DETECTION AND MONITORING SYSTEMS.—The Secretary of Defense shall establish requirements for counter-drug detection and monitoring systems to be used by the Department of Defense in the performance of its mission under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the transit of illegal drugs into the United States. Such requirements shall be designed—

''(1) to minimize unnecessary redundancy between counter-drug detection and monitoring systems;

''(2) to grant priority to assets and technologies of the Department of Defense that are already in existence or that would require little additional development to be available for use in the performance of such mission;

''(3) to promote commonality and interoperability between counter-drug detection and monitoring systems in a cost-effective manner; and

''(4) to maximize the potential of using counter-drug detection and monitoring systems for other defense missions whenever practicable.

''(b) EVALUATION OF SYSTEMS.—The Secretary of Defense shall identify and evaluate existing and proposed counter-drug detection and monitoring systems in light of the requirements established under subsection (a). In carrying out such evaluation, the Secretary shall—

''(1) assess the capabilities, strengths, and weaknesses of counter-drug detection and monitoring systems; and

''(2) determine the optimal and most cost-effective combination of use of counter-drug detection and monitoring systems to carry out activities relating to the reconnaissance, detection, and monitoring of drug traffic.

''(c) SYSTEMS PLAN.—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to determine which counter-drug detection and monitoring systems should be eliminated from the counter-drug program based on the results of such evaluation. The plan shall include an estimate by the Secretary of the full cost to implement the plan, including the cost to develop, procure, operate, and maintain equipment used in counter-drug detection and monitoring activities performed under the plan and training and personnel costs associated with such activities.

''(d) REPORT.—Not later than six months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to Congress a report on the requirements established under subsection (a) and the results of the evaluation conducted under subsection (b). The report shall include the plan prepared under subsection (c).

''(e) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), none of the funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 pursuant to an authorization of appropriations in this Act [see Tables for classification] may be obligated or expended for the procurement or upgrading of a counter-drug detection and monitoring system, for research and development with respect to such a system, or for the lease or rental of such a system until after the date on which the Secretary of Defense submits to Congress the report required under subsection (d).

''(2) Paragraph (1) shall not prohibit obligations or expenditures of funds for—

''(A) any procurement, upgrading, research and development, or lease of a counter-drug detection and monitoring system that is necessary to carry out the evaluation required under subsection (b); or

''(B) the operation and maintenance of counter-drug detection and monitoring systems used by the Department of Defense as of the date of the enactment of this Act.

''(f) DEFINITION.—For purposes of this section, the term 'counter-drug detection and monitoring systems' means land-, air-, and sea-based detection and monitoring systems suitable for use by the Department of Defense in the performance of its mission—

''(1) under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States; and

''(2) to provide support to law enforcement agencies in the detection, monitoring, and communication of the movement of traffic at, near, and outside the geographic boundaries of the United States.''

INTEGRATION OF COMMUNICATIONS NETWORK

Section 1204(a) of Pub. L. 101–189 provided that:

''(1) The Secretary of Defense shall integrate into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated (in whole or in part) to the interdiction of illegal drugs into the United States.

''(2) The Secretary shall carry out this subsection in consultation with the Director of National Drug Control Policy.''

RESEARCH AND DEVELOPMENT

Section 1205 of Pub. L. 101–189 provided that: ''The Secretary of Defense shall ensure that adequate research and development activities of the Department of Defense, including research and development activities of the Defense Advanced Research Projects Agency, are devoted to technologies designed to improve—

''(1) the ability of the Department to carry out the detection and monitoring function of the Department under section 124 of title 10, United States Code, as added by section 1202; and

''(2) the ability to detect illicit drugs and other dangerous and illegal substances that are concealed in containers.''

TRAINING EXERCISES IN DRUG-INTERDICTION AREAS

Section 1206 of Pub. L. 101–189 provided that:

''(a) EXERCISES REQUIRED.—The Secretary of Defense shall direct that the armed forces, to the maximum extent practicable, shall conduct military training exercises (including training exercises conducted by the reserve components) in drug-interdiction areas.

''(b) REPORT.—(1) Not later than February 1 of 1991 and 1992, the Secretary shall submit to Congress a report on the implementation of subsection (a) during the preceding fiscal year.

''(2) The report shall include—

''(A) a description of the exercises conducted in drug-interdiction areas and the effectiveness of those exercises in the national counter-drug effort; and

''(B) a description of those additional actions that could be taken (and an assessment of the results of those actions) if additional funds were made available to the Department of Defense for additional military training exercises in drug-interdiction areas for the purpose of enhancing interdiction and deterrence of drug smuggling.

''(c) DRUG-INTERDICTION AREAS DEFINED.—For purposes of this section, the term 'drug-interdiction areas' includes land and sea areas in which, as determined by the Secretary, the smuggling of drugs into the United States occurs or is believed by the Secretary to have occurred.''

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

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

(b) Notwithstanding subsection (a), if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty vested by law in the Department of Defense, or an officer, official, or agency thereof, including one assigned to the Army, Navy, Air Force, or Marine Corps by section 3062(b), 5062, 5063, or 8062(c) of this title, may be transferred, reassigned, or consolidated. The transfer, reassignment, or consolidation remains in effect until the Presi-

dent determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the military departments or one or more of the armed forces.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
125(a)	5:171a(c)(1), (2). 5:171n(a) (as applicable to 5:171a(c)(1)).	July 26, 1947, ch. 343, §202(c)(1), (2), (4), (5), (6); added Aug. 10, 1949, ch. 412, §5(3d, 4th, 6th, 7th, and 8th pars.); restated Aug. 6, 1958, Pub. L. 85–599, §3(a), (1st, 2d, 5th, 6th, and 7th pars.), 72 Stat. 514, 515.
125(b).	5:171a(c)(5). 5:171n(a) (as applicable to 5:171a(c)(5)).	
125(c).	5:171a(c)(4).	
125(d)	5:171a(c)(6). 5:171n(a) (as applicable to 5:171a(c)(6)).	July 26, 1947, ch. 343, §308(a) (as applicable to §202(c)(1), (5), (6)), 61 Stat. 509.

In subsection (a), the following substitutions are made: ''Except as provided by subsections (b) and (c)'' for ''except as otherwise provided in this subsection''; ''vested . . . by law'' for ''established by law to be performed by''; ''recommending'' for ''stating''; ''proposes'' for ''contemplates''; and ''the period'' for ''the thirty-day period or the forty-day period''. The words ''on the first day after'' are inserted for clarity. The words ''if carried out'' are omitted as surplusage.

In subsection (b), the words ''Notwithstanding subsection (a)'' are substituted for the words ''Notwithstanding other provisions of this subsection''; and ''Unless the President determines otherwise'' for ''subject to the determination of the President''.

In subsection (c), the following substitutions are made: ''Notwithstanding subsection (a)'' for ''Notwithstanding the provisions of paragraph (1) hereof''; and ''armed forces'' for ''services''.

In subsection (d), the following substitutions are made: ''In subsection (a) (1)'' for ''within the meaning of paragraph (1) hereof''; and ''considers'' for ''deems''. The words ''advantageous to the Government in terms of'' are omitted as surplusage.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 struck out at end ''However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.''

1986—Subsec. (a). Pub. L. 99–433, §103(1), struck out provision under which the Secretary of Defense could substantially transfer, reassign, consolidate, or abolish functions, powers, or duties vested in the Department of Defense by law if the Secretary reported the details of the proposed transfer, reassignment, consolidation, or abolition to Congress and if Congress did not affirmatively reject the proposal.

Subsec. (b). Pub. L. 99–433, §§103(2), 514(c)(1), inserted ''vested by law in the Department of Defense, or an officer, official, or agency thereof'' and substituted ''5062, 5063'' for ''5012, 5013''.

Subsec. (d). Pub. L. 99–433, §301(b)(1), struck out subsec. (d) which read as follows: ''In subsection (a)(1), 'major combatant function, power, or duty' does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate.''

1984—Subsec. (a). Pub. L. 98–525 substituted ''section 2 of the National Security Act of 1947 (50 U.S.C. 401)'' for ''section 401 of title 50''.

1966—Subsec. (c). Pub. L. 89–501 required the Secretary of Defense to report to the Congress all the pertinent details regarding any substantial reduction or elimination of a major weapons system before action could be initiated or effected by the Department of Defense.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Section 303 of Pub. L. 87–651 provided that:

''(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code, shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [63 Stat. 203; 71 Stat. 611], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [63 Stat. 207].

''(b) The provisions of this section are enacted by the Congress—

''(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

''(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 113, 191 of this title.

§126. Transfer of funds and employees

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
126(a)	5:172f(a).	July 26, 1947, ch. 343, § 407; added Aug. 10, 1949, ch. 412, § 11 (21st and 22d pars.), 63 Stat. 589.
	5:171n(a) (as applicable to 5:172f(a)).	
126(b).	5:172f (less (a)).	July 26, 1947, ch. 343, § 308(a) (as applicable to § 407), 61 Stat. 509.

In subsection (a), the words ''under authority of law'' are omitted as surplusage. The following substitutions are made: ''needed'' for ''necessary''; ''used'' for ''be available for use by''; and ''those appropriations'' for ''said funds''.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize ''transfers of personnel'' (Senate Report No. 366, 81st Congress, p. 23).

AMENDMENTS

1980—Subsec. (b) Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

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

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

(Added Pub. L. 94–106, title VIII, § 804(a), Oct. 7, 1975, 89 Stat. 538, § 140; amended Pub. L. 98–94, title XII, § 1268(2), Sept. 24, 1983, 97 Stat. 705; renumbered § 127 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 103–160, div. A, title III, § 361, Nov. 30, 1993, 107 Stat. 1627; Pub. L. 103–337, div. A, title III, § 378, Oct. 5, 1994, 108 Stat. 2737.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337 struck out par. (1) designation before ''In any case'' and struck out par. (2) which read as follows: ''The amount of funds expended by the Inspector General of the Department of Defense under subsections (a) and (b) during a fiscal year may not exceed $400,000.''

1993—Subsec. (a). Pub. L. 103–160, § 361(1), inserted '', the Inspector General of the Department of Defense,'' after ''the Secretary of Defense'' and ''or the Inspector General'' after ''the Secretary concerned'' and after ''The Secretary concerned''.

Subsec. (b). Pub. L. 103–160, § 361(2), inserted '', by the Inspector General to any person in the Office of the Inspector General,'' after ''the Department of Defense''.

Subsec. (c). Pub. L. 103–160, § 361(3), designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433 renumbered section 140 of this title as this section and substituted ''Emergency'' for ''Emergencies'' in section catchline.

1983—Subsec. (a). Pub. L. 98–94 struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–94 struck out ''of this section'' after ''subsections (a) and (b)''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CONSTRUCTION AUTHORITY OF SECRETARY OF DEFENSE UNDER DECLARATION OF WAR OR NATIONAL EMERGENCY

Pub. L. 97–99, title IX, §903, Dec. 23, 1981, 95 Stat. 1382, which authorized the Secretary of Defense, in the event of a declaration of war or the declaration of a national emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub. L. 97–214, §§2(a), 7(18), July 12, 1982, 96 Stat. 157, 174, effective Oct. 1, 1982.

§127a. Expenses for contingency operations

(a) DESIGNATION OF NATIONAL CONTINGENCY OPERATIONS.—The funding procedures prescribed by this section apply with respect to any operation involving the armed forces that is designated by the Secretary of Defense as a National Contingency Operation. Whenever the Secretary designates an operation as a National Contingency Operation, the Secretary shall promptly transmit notice of that designation in writing to Congress. This section does not provide authority for the President or the Secretary of Defense to carry out an operation, but applies to the Department of Defense mechanisms by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) WAIVER OF REQUIREMENT TO REIMBURSE SUPPORT UNITS.—(1) When an operating unit of the armed forces participating in a National Contingency Operation receives support services from a support unit of the armed forces that operates through the Defense Business Operations Fund (or a successor fund), that operating unit need not reimburse that support unit for the incremental costs incurred by the support unit in providing such support, notwithstanding any other provision of law or Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to a support unit shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(3) The total of the unreimbursed sums for all National Contingency Operations may not exceed $300,000,000 at any one time.

(c) FINANCIAL PLAN FOR CONTINGENCY OPERATIONS.—(1) Within two months of the beginning of any National Contingency Operation, the Secretary of Defense shall submit to Congress a financial plan for the operation that sets forth the manner by which the Secretary proposes to obtain funds for the full cost to the United States of the operation.

(2) The plan shall specify in detail how the Secretary proposes to make the Defense Business Operations Fund (or a successor fund) whole again.

(d) INCREMENTAL COSTS.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs that are directly attributable to the operation and that are otherwise chargeable to accounts available for operation and maintenance or for military personnel. Any costs which are otherwise chargeable to accounts available for procurement may not be considered to be incremental costs for purposes of this section.

(e) INCREMENTAL PERSONNEL COSTS ACCOUNT.—There is hereby established in the Department of Defense a reserve fund to be known as the ''National Contingency Operation Personnel Fund''. Amounts in the fund shall be available for incremental military personnel costs attributable to a National Contingency Operation. Amounts in the fund remain available until expended.

(f) COORDINATION WITH WAR POWERS RESOLUTION.—This section may not be construed as altering or superseding the War Powers Resolution. This section does not provide authority to conduct a National Contingency Operation or any other operation.

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

(h) DEFINITION.—In this section, the term ''National Contingency Operation'' means a military operation that is designated by the Secretary of Defense as an operation the cost of which, when considered with the cost of other ongoing or potential military operations, is expected to have a negative effect on training and readiness.

(Added Pub. L. 103–160, div. A, title XI, §1108(a)(1), Nov. 30, 1993, 107 Stat. 1751.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (f), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

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

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

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

(A) illegal production of nuclear weapons, or

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

(3) In making a determination under paragraph (2), the Secretary may consider what the

likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

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

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

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

(i) illegal production of nuclear weapons, or

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

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

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

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

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

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

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

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

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''on an annual basis'' for ''on a quarterly basis''.

§ 129. Prohibition of certain civilian personnel management constraints

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the workload required to carry out the functions and activities of the department and (2) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any man-year constraint or limitation.

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

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

(2) managed on the basis of any end-strength; or

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

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

(1) who are employed by industrial-type activities or commercial-type activities described in section 2208 of this title; and

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

(Added Pub. L. 97–86, title IX, § 904(a), Dec. 1, 1981, 95 Stat. 1114, § 140b; renumbered § 129, Pub. L. 99–433, title I, § 101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99–661, div. A, title V, § 533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102–190, div. A, title III, § 312(b), Dec. 5, 1991, 105 Stat. 1335.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''department and (2)'' for ''department, (2)'' and struck out '', and (3) the authorized end strength for the civilian personnel of the department for such fiscal year'' at end of first sentence.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99–433 renumbered section 140b of this title as this section.

§ 129a. General personnel policy

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

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

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

(Added Pub. L. 101–510, div. A, title XIV, § 1483(b)(2), Nov. 5, 1990, 104 Stat. 1715.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101–510, § 1483(a).

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

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

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

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

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

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

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

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

(Added Pub. L. 101–510, div. A, title XIV, §1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102–190, div. A, title X, §1061(a)(2), Dec. 5, 1991, 105 Stat. 1472.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, §9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(b)(3).

AMENDMENTS

1991—Pub. L. 102–190 inserted ''of'' after ''services'' in section catchline.

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

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

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

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

(Added Pub. L. 98–94, title XII, §1217(a), Sept. 24, 1983, 97 Stat. 690, §140c; amended Pub. L. 99–145, title XIII, §1303(a)(3), Nov. 8, 1985, 99 Stat. 738; renumbered §130 and amended Pub. L. 99–433, title I, §§101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIV, §1484(b)(1), Nov. 5, 1990, 104 Stat. 1715.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''Regulations under this section'' for ''(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations'' in subsec. (b) and redesignated former subsec. (b)(2) as subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1986—Pub. L. 99–433 renumbered section 140c of this title as this section and substituted ''Authority'' for ''Secretary of Defense: authority'' in section catchline.

1985—Subsec. (b)(1). Pub. L. 99–145 substituted ''September 24, 1983'' for ''enactment of this section''.

CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.

131. Office of the Secretary of Defense.
132. Deputy Secretary of Defense.
133. Under Secretary of Defense for Acquisition and Technology.
133a. Deputy Under Secretary of Defense for Acquisition and Technology.
[133b. Renumbered.]
134. Under Secretary of Defense for Policy.
134a. Deputy Under Secretary of Defense for Policy.
135. Under Secretary of Defense (Comptroller).
136. Under Secretary of Defense for Personnel and Readiness.
[136a. Renumbered.]
137. Director of Defense Research and Engineering.
138. Assistant Secretaries of Defense.
139. Director of Operational Test and Evaluation.

Sec.
140. General Counsel.
141. Inspector General.
142. Assistant to the Secretary of Defense for Atomic Energy.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, § 903(a)(3), Oct. 5, 1994, 108 Stat. 2823, substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' in item 135.

1993—Pub. L. 103–160, div. A, title IX, § 906(b), Nov. 30, 1993, 107 Stat. 1729, amended table of sections generally, inserting ''and Technology'' after ''Acquisition'' in items 133 and 133a, adding item 136, and redesignating former items 135, 136, 137, 138, 139, 140, and 141 as 137, 138, 135, 139, 140, 141, and 142, respectively.

1991—Pub. L. 102–190, div. A, title IX, § 901(a)(2), Dec. 5, 1991, 105 Stat. 1450, added item 134a.

1987—Pub. L. 100–180, div. A, title XII, § 1245(a)(2), Dec. 4, 1987, 101 Stat. 1165, added item 141.

Pub. L. 100–26, § 9(b)(2), Apr. 21, 1987, 101 Stat. 287, struck out item 140a ''Counterintelligence official reception and representation expenses'' and item 140b ''Authority to use proceeds from counterintelligence operations of the military departments''.

1986—Pub. L. 99–500, § 101(c) [title X, § 902(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–131, and Pub. L. 99–591, § 101(c) [title X, § 902(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–131; Pub. L. 99–661, div. A, title IX, formerly title IV, § 902(a)(2), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 133a.

Pub. L. 99–569, title IV, §§ 401(d), 403(b), Oct. 27, 1986, 100 Stat. 3196, 3197, added items 140a and 140b.

Pub. L. 99–433, title I, §§ 101(a)(6), 110(e)(2), Oct. 1, 1986, 100 Stat. 995, 1003, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in chapter heading, and amended analysis generally, substituting items 131 to 140 for former items 131 ''Executive department'', 132 ''Seal'', 133 ''Secretary of Defense: appointment; powers and duties; delegation by'', 133a ''Secretary of Defense: annual report on North Atlantic Treaty Organization readiness'', 133b ''Sale or transfer of defense articles: reports to Congress'', 134 ''Deputy Secretary of Defense: appointment; powers and duties; precedence'', 134a ''Under Secretary of Defense for Acquisition: appointment'', 135 ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments; powers and duties; precedence'', 136 ''Assistant Secretaries of Defense: appointment; powers and duties; precedence'', 136a ''Director of Operational Test and Evaluation: appointment, powers and duties'', 137 ''General Counsel: appointment; powers and duties'', 138 ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'', 139 ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'', 139a ''Oversight of cost growth in major programs: Selected Acquisition Reports'', 139b ''Oversight of cost growth in major programs: unit cost reports'', 139c ''Major defense acquisition programs: independent cost estimates'', 140 ''Emergencies and extraordinary expenses'', 140a ''Secretary of Defense: funds transfers for foreign cryptologic support'', 140b ''Prohibition of certain civilian personnel management constraints'', and 140c ''Secretary of Defense: authority to withhold from public disclosure certain technical data''.

Pub. L. 99–348, title V, § 501(e)(2), July 1, 1986, 100 Stat. 708, added item 134a and substituted ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments'' for ''Under Secretaries of Defense: appointment'' in item 135.

1983—Pub. L. 98–94, title XII, §§ 1203(a)(2), 1211(a)(2), 1217(b), Sept. 24, 1983, 97 Stat. 683, 686, 690, added items 136a, 139c, and 140c.

1982—Pub. L. 97–295, § 1(2)(B), Oct. 12, 1982, 96 Stat. 1288, added items 133a and 133b.

Pub. L. 97–252, title XI, § 1107(a)(2), Sept. 8, 1982, 96 Stat. 745, added items 139a and 139b.

1981—Pub. L. 97–86, title IX, § 904(b), Dec. 1, 1981, 95 Stat. 1114, added item 140b.

1980—Pub. L. 96–450, title IV, § 401(b), Oct. 14, 1980, 94 Stat. 1977, added item 140a.

Pub. L. 96–342, title X, § 1001(d)(2), Sept. 8, 1980, 94 Stat. 1119, substituted ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' for ''Secretary of Defense: Annual authorization of appropriations for armed forces'' in item 138.

1977—Pub. L. 95–140, §§ 1(b), 2(b), Oct. 21, 1977, 91 Stat. 1172, 1173, substituted ''Deputy Secretary'' for ''Deputy Secretaries'' in item 134 and ''Under Secretaries of Defense'' for ''Director of Defense Research and Engineering'' in item 135.

1975—Pub. L. 94–106, title VIII, § 804(a), Oct. 7, 1975, 89 Stat. 538, added item 140.

1973—Pub. L. 93–155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 612, added items 138 and 139.

1972—Pub. L. 92–596, § 4(3), Oct. 27, 1972, 86 Stat. 1318, substituted ''Deputy Secretaries'' for ''Deputy Secretary'' in item 134.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 41 section 421.

§ 131. Office of the Secretary of Defense

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

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

(1) The Deputy Secretary of Defense.

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

(3) The Under Secretary of Defense for Policy.

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

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

(6) The Director of Defense Research and Engineering.

(7) The Assistant Secretaries of Defense.

(8) The Director of Operational Test and Evaluation.

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

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

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

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

(d) The Secretary of each military department, and the civilian employees and members of the armed forces under the jurisdiction of the Secretary, shall cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 99–433, title I, §104, Oct. 1, 1986, 100 Stat. 996; amended Pub. L. 103–160, div. A, title IX, §906(a), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 103–337, div. A, title IX, §903(b)(1), Oct. 5, 1994, 108 Stat. 2823.)

PRIOR PROVISIONS

A prior section 131 was renumbered section 111 of this title.

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–337 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller''.

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Office of the Secretary of Defense is composed of the following:

''(1) The Deputy Secretary of Defense.

''(2) The Under Secretary of Defense for Acquisition.

''(3) The Under Secretary of Defense for Policy.

''(4) The Director of Defense Research and Engineering.

''(5) The Assistant Secretaries of Defense.

''(6) The Comptroller of the Department of Defense.

''(7) The Director of Operational Test and Evaluation.

''(8) The General Counsel of the Department of Defense.

''(9) The Inspector General of the Department of Defense.

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

MANAGEMENT STUDIES OF OFFICE OF SECRETARY OF DEFENSE

Section 109 of Pub. L. 99–433 provided that:

''(a) SECRETARY OF DEFENSE STUDY.—The Secretary of Defense shall conduct a study of the functions and organization of the Office of the Secretary of Defense. The study shall consider whether the present allocation of functions to, and the organizational structure of, the Office constitute the most effective, efficient, and economical allocation and structure of the Office to assist the Secretary in carrying out his duties and responsibilities. The study shall include consideration of each of the matters specified in subsection (d).

''(b) SERVICE SECRETARIES JOINT STUDY.—(1) The Secretaries of the military departments shall conduct a joint study of the functions and organization of the Office of the Secretary of Defense. The study shall be conducted independently of the study conducted by the Secretary of Defense under subsection (a). The Secretaries shall submit a joint report to the Secretary of Defense on such study at a time specified by the Secretary. Except as provided in paragraph (2), the report shall include a discussion of and recommendations concerning each of the matters specified in subsection (d).

''(2) The Secretary of Defense shall determine the extent to which, and prescribe the procedures under which, the Secretaries of the military departments shall study the matters specified in subsection (d)(1)(A) relating to contingency planning and military operations.

''(c) CHAIRMAN OF JCS STUDY.—The Chairman of the Joint Chiefs of Staff shall conduct a study of the functions and organization of the Office of the Secretary of Defense. The study shall be conducted independently of the study conducted by the Secretary of Defense under subsection (a). The Chairman shall submit a report to the Secretary of Defense on such study at a time specified by the Secretary. The report shall include a discussion of and recommendations concerning the matters specified in paragraphs (1)(C), (1)(D), (2), (3), (5), and (6) of subsection (d).

''(d) MATTERS TO BE INCLUDED.—The study required by subsection (a) shall include consideration of the following:

''(1) Whether the present organization of the Office—

''(A) is optimally structured to assist the Secretary of Defense in the effective exercise of civilian control of the Department of Defense, including civilian control of—

''(i) defense policy development and strategic planning;

''(ii) program and budget development;

''(iii) policy, program, and budget execution;

''(iv) contingency planning; and

''(v) military operations;

''(B) is the most effective and efficient organization for the initiation, development, and articulation of defense policy;

''(C) ensures that strategic planning and contingency planning are linked to, and derived from, national security strategy, policies, and objectives; and

''(D) inhibits integration of the capabilities of the Armed Forces along mission lines.

''(2) Whether the planning, programming, and budgeting system of the Department of Defense (including the role of the Office in such system) needs to be revised—

''(A) to strengthen strategic planning and policy direction;

''(B) to ensure that strategic planning is consistent with national security strategy, policies, and objectives;

''(C) to ensure that there is a sufficient relationship between strategic planning and the resource levels projected to be available for the period for which the planning is to be effective;

''(D) to ensure that strategic planning and program development give sufficient attention to alliances with other nations;

''(E) to provide for more effective oversight, control, and evaluation of policy, program, and budget execution; and

''(F) to ensure that past program and budget decisions are effectively evaluated, that such evaluations are supported by consistent, complete, and timely financial and performance data, and that such evaluations are fully considered in the next planning, programming, and budgeting cycle.

''(3) Whether the major force program categories of the Five-Year Defense Plan could be restructured to better assist decisionmaking and management control.

''(4) Means to improve and strengthen the oversight function within each element of the Office in policy areas not addressed by the planning, programming, and budgeting system.

''(5) Factors inhibiting efficient and effective execution of the functions of the Office, including factors relating to—

''(A) duplication of functions (both within the Office and between the Office and other elements of the Department);

''(B) insufficient information; and

''(C) insufficient resources (including personnel).

''(6) Alternative allocations of authorities and functions of the Office and other reorganization proposals for the Office, including the desirability of—

''(A) establishing Under Secretaries of Defense for mission-oriented areas of responsibility;

''(B) decentralizing functions of the Office;

''(C) reducing the number of officials reporting directly to the Secretary of Defense; and

''(D) changing the ratio of members of the Armed Forces to civilian employees in the Office.

''(7) Whether political appointees in the Office of the Secretary of Defense have sufficient experience and expertise, upon appointment, to be capable of contributing immediately to effective policy formulation and management.

''(e) ANALYSIS OF CIVILIAN CONTROL.—(1) The Secretary of Defense, in considering under subsection (d)(1)(A) whether effective civilian control of the De-

partment of Defense is best assisted by the current structure of the Office, shall examine the functions performed in the Office by—

''(A) members of the Armed Forces on the active-duty list; and

''(B) members of the Armed Forces in a retired status and members of the reserve components who are employed in a civilian capacity.

''(2) Such examination shall include a determination of the total number of positions in the Office of the Secretary of Defense above grade GS–8 and the military equivalent (as determined by the Secretary of Defense), and of such number—

''(A) the number of positions held by members of the Armed Forces on the active-duty list, shown for the military equivalent of each civilian pay grade by number and as a percentage of the total number of positions in the Office in the civilian pay grade concerned and in the military equivalent of such civilian pay grade;

''(B) the number of such positions held by members of the Armed Forces in a retired status who are serving in a civilian capacity, shown for each civilian pay grade in the same manner as provided under clause (A); and

''(C) the number of such positions held by members of the reserve components who are serving in a civilian capacity, shown for each civilian pay grade in the same manner as provided under clause (A).

''(3) In determining the total number of positions in the Office of the Secretary of Defense in grades above GS–8, the Secretary shall exclude positions which are primarily clerical or secretarial.

''(f) INDEPENDENT CONTRACTOR STUDY.—The Secretary shall provide for an independent study to be carried out by a contractor to consider the same matters required to be considered by the Secretary under subsection (d). The Secretary shall ensure that the contractor has full access to such information as the contractor requires and that the contractor otherwise receives full cooperation from all officials and entities of the Department of Defense.

''(g) REPORT TO CONGRESS.—(1) The Secretary of Defense shall submit to Congress a report on the Secretary's study under subsection (a). The report shall include—

''(A) the findings and conclusions of the Secretary with respect to each of the matters set forth in subsection (d);

''(B) the findings and statistical determinations required under subsection (e); and

''(C) any recommendations of the Secretary for organizational changes in the Office of the Secretary of Defense and a description of the means for implementing each recommendation.

''(2) The Secretary shall include with the report a copy of the reports to the Secretary under subsections (b) and (c) and a copy of the report of the independent contractor under subsection (f), together with such comments on each such report as the Secretary considers appropriate.

''(3) The report under this subsection shall be submitted not later than one year after the date of the enactment of this Act [Oct. 1, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 192 of this title.

§ 132. Deputy Secretary of Defense

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

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

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

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518, § 134; amended Pub. L. 92–596, § 4(1), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, § 1(a), Oct. 21, 1977, 91 Stat. 1172; renumbered § 132 and amended Pub. L. 99–433, title I, §§ 101(a)(7), 110(d)(7), Oct. 1, 1986, 100 Stat. 995, 1003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
134(a)	5:171c(a) (1st sentence).	July 26, 1947, ch. 343, § 203(a); added Aug. 10, 1949, ch. 412, § 6(a) (1st par.), 63 Stat. 581.
134(b)	5:171c(a) (less 1st sentence and last 15 words of 2d sentence).	
134(c)	5:171c(a) (last 15 words of 2d sentence).	

In subsection (a), the last sentence is substituted for 5 U.S.C. 171c(a) (proviso).

PRIOR PROVISIONS

A prior section 132 was renumbered section 112 of this title.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 134 of this title as this section and struck out ": appointment; powers and duties; precedence'' at end of section catchline.

1977—Pub. L. 95–140, § 1(a)(4), substituted ''Deputy Secretary'' for ''Deputy Secretaries'' in section catchline.

Subsec. (a). Pub. L. 95–140, § 1(a)(1), substituted ''There is a Deputy Secretary'' for ''There are two Deputy Secretaries'' and struck out ''a'' before ''Deputy Secretary''.

Subsec. (b). Pub. L. 95–140, § 1(a)(2), substituted ''Deputy Secretary'' for ''Deputy Secretaries'' and ''Deputy Secretary'' for ''Deputy Secretaries, in the order of precedence, designated by the President''.

Subsec. (c). Pub. L. 95–140, § 1(a)(3), substituted ''The Deputy Secretary takes'' for ''The Deputy Secretaries take''.

1972—Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary'' in section catchline.

Subsec. (a). Pub. L. 92–596 substituted ''There are two Deputy Secretaries of Defense'' for ''There is a Deputy Secretary of Defense''.

Subsec. (b). Pub. L. 92–596 provided for the exercise of powers and duties consequent to the creation of a second Deputy Secretary.

Subsec. (c). Pub. L. 92–596 substituted ''The Deputy Secretaries take'' for ''The Deputy Secretary takes''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 133. Under Secretary of Defense for Acquisition and Technology

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

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

(1) supervising Department of Defense acquisition;

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

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

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

(c) The Under Secretary—

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

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

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

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

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

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

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

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

(Added Pub. L. 99–348, title V, §501(a), July 1, 1986, 100 Stat. 707, §134a; renumbered §133 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(c)(1), (d)(8), Oct. 1, 1986, 100 Stat. 995, 1002, 1003; Pub. L. 99–500, §101(c) [title X, §901], Oct. 18, 1986, 100 Stat. 1783–82, 1783–130, and Pub. L. 99–591, §101(c) [title X, §901], Oct. 30, 1986, 100 Stat. 3341–82, 3341–130; Pub. L. 99–661, div. A, title IX, formerly title IV, §901, Nov. 14, 1986, 100 Stat. 3910, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–456, div. A, title VIII, §809(d), Sept. 29, 1988, 102 Stat. 2013; Pub. L. 103–160, div. A, title IX, §904(b), Nov. 30, 1993, 107 Stat. 1728.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (d)(3), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 133 was renumbered section 113 of this title.

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in section catchline and in subsecs. (a), (b), and (e)(1).

1988—Subsec. (d)(1). Pub. L. 100–456 inserted provision that policies provide for coordination of annual plans developed by each such element for the conduct of audit and oversight functions within each contracting activity.

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 generally amended section identically. Prior to amendment, section read as follows:

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

''(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe, except as otherwise provided by law.''

Pub. L. 99–433 renumbered section 134a of this title as this section, struck out '': appointment'' at end of section catchline, and inserted ''of Defense'' after ''Under Secretary'' in subsec. (a).

CHANGE OF NAME

Section 904(a), (f) of Pub. L. 103–160 provided that:

''(a) REDESIGNATIONS.—The office of Under Secretary of Defense for Acquisition in the Department of Defense is hereby redesignated as Under Secretary of Defense for Acquisition and Technology. The office of Deputy Under Secretary of Defense for Acquisition in the Department of Defense is hereby redesignated as Deputy Under Secretary of Defense for Acquisition and Technology.

''(f) REFERENCES IN OTHER LAWS.—Any reference to the Under Secretary of Defense for Acquisition or the Deputy Under Secretary of Defense for Acquisition in any provision of law other than title 10, United States Code, or in any rule, regulation, or other paper of the United States shall be treated as referring to the Under Secretary of Defense for Acquisition and Technology or the Deputy Under Secretary of Defense for Acquisition and Technology, respectively.''

IMPROVEMENT IN DEFENSE RESEARCH AND PROCUREMENT LIAISON WITH ISRAEL

Section 1006 of Pub. L. 100–456, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that: ''The Secretary of Defense, in consultation with the Under Secretary of Defense for Acquisition and Technology, shall designate for duty in

Israel an individual or individuals to serve as the primary liaison between the procurement and research and development activities of the United States Armed Forces and those of the State of Israel.''

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

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

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

(Added Pub. L. 99–500, § 101(c) [title X, § 902(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–131, and Pub. L. 99–591, § 101(c) [title X, § 902(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–131; Pub. L. 99–661, div. A, title IX, formerly title IV, § 902(a)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–160, div. A, title IX, § 904(c), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(2), Oct. 5, 1994, 108 Stat. 2855.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500 and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 133a was renumbered section 117 of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–337 inserted ''and Technology'' before ''in the performance of''.

1993—Pub. L. 103–160 substituted ''Deputy Under Secretary of Defense for Acquisition and Technology'' for ''Deputy Under Secretary of Defense for Acquisition'' as section catchline and in subsecs. (a) and (b).

[§ 133b. Renumbered § 118]

§ 134. Under Secretary of Defense for Policy

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

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

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

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

(B) in reviewing such plans.

(c) The Under Secretary takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology, and the Secretaries of the military departments.

(Added Pub. L. 99–433, title I, § 105(1), Oct. 1, 1986, 100 Stat. 997; amended Pub. L. 99–500, § 101(c) [title X, § 903(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, § 101(c) [title X, § 903(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(a), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Provisions of this section were contained in section 135 of this title prior to amendment by Pub. L. 99–433.

A prior section 134 was renumbered section 132 of this title.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1986—Subsec. (c). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (c) identically, inserting ''the Under Secretary of Defense for Acquisition,''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 134a. Deputy Under Secretary of Defense for Policy

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

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

(Added Pub. L. 102–190, div. A, title IX, § 901(a)(1), Dec. 5, 1991, 105 Stat. 1450.)

PRIOR PROVISIONS

A prior section 134a was renumbered section 133 of this title.

§ 135. Under Secretary of Defense (Comptroller)

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

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

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

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

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

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

(A) the preparation and execution of budgets;

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

(C) progress and statistical reporting;

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

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

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

(e) The Under Secretary of Defense (Comptroller) shall ensure that the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives are each informed, in a timely manner, regarding all matters relating to the budgetary, fiscal, and analytic activities of the Department of Defense that are under the supervision of the Under Secretary of Defense (Comptroller).

(Added Pub. L. 99–433, title I, §107, Oct. 1, 1986, 100 Stat. 998, §137; renumbered §135 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(2), 902(a)(1), (b), Nov. 30, 1993, 107 Stat. 1726, 1727; Pub. L. 103–337, div. A, title IX, §903(a)(1), (2), Oct. 5, 1994, 108 Stat. 2823.)

PRIOR PROVISIONS

A prior section 135 was renumbered section 137 of this title.

AMENDMENTS

1994—Pub. L. 103–337, §903(a)(2), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' as section catchline.

Subsec. (a). Pub. L. 103–337, §903(a)(1)(A), substituted ''an Under Secretary of Defense (Comptroller)'' for ''a Comptroller of the Department of Defense''.

Subsecs. (b) to (e). Pub. L. 103–337, §903(a)(1)(B), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' wherever appearing.

1993—Pub. L. 103–160, §901(a)(2), renumbered section 137 of this title as this section.

Subsec. (b). Pub. L. 103–160, §902(a)(1), inserted ''The Comptroller is the agency Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31.'' after ''(b)'' and ''additional'' after ''shall perform such''.

Subsec. (d). Pub. L. 103–160, §901(a)(2), added subsec. (d).

Subsec. (e). Pub. L. 103–160, §902(b), added subsec. (e).

CHANGE OF NAME

Section 903(d) of Pub. L. 103–337 provided that: ''Any reference to the Comptroller of the Department of Defense in any provision of law other than title 10, United States Code, or in any rule, regulation, or other paper of the United States shall be treated as referring to the Under Secretary of Defense (Comptroller).''

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3022, 5025, 8022 of this title.

§136. Under Secretary of Defense for Personnel and Readiness

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

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

(c) The Under Secretary of Defense for Personnel and Readiness takes precedence in the Department of Defense after the Comptroller.[1]

(Added Pub. L. 103–160, div. A, title IX, §903(a), Nov. 30, 1993, 107 Stat. 1727.)

PRIOR PROVISIONS

A prior section 136 was renumbered section 138 of this title.

[§136a. Renumbered §139]

§137. Director of Defense Research and Engineering

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

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

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 518, §135; amended Pub. L. 92–596, §4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, §2(a), Oct. 21, 1977, 91 Stat. 1172; Pub. L. 99–348, title V, §501(b)(1), (2), (e)(1), July 1, 1986, 100 Stat. 707, 708; Pub. L. 99–433, title I, §105, Oct. 1, 1986, 100 Stat. 997; Pub. L. 99–500, §101(c) [title X, §903(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, §101(c) [title X, §903(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, §903(b)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; renumbered §137 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(1), 904(d)(1), Nov. 30, 1993, 107 Stat. 1726, 1728.)

[1] So in original. Probably should be ''Under Secretary of Defense (Comptroller).''

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
135(a)	5:171c(b)(1) (1st 30 words of 1st sentence).	July 26, 1947, ch. 343, § 203(b)(1) (less last sentence); added Aug. 6, 1958, Pub. L. 85–599, § 9(a) (2d par., less last sentence), 72 Stat. 520.
135(b).	5:171c(b)(1) (2d sentence).	
135(c).	5:171c(b)(1) (1st sentence, less 1st 30 words).	

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 137 was renumbered section 135 of this title.

Another prior section 137 was renumbered section 140 of this title.

AMENDMENTS

1993—Pub. L. 103–160, § 901(a)(1), renumbered section 135 of this title as this section.

Subsec. (b). Pub. L. 103–160, § 904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1986—Pub. L. 99–433, § 105(1), amended section catchline generally, substituting ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments; powers and duties; precedence''.

Pub. L. 99–348, § 501(e)(1), substituted ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments'' for ''Under Secretaries of Defense: appointment'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 105(1), substituted a new subsec. (a) for former provisions establishing the positions of Under Secretary of Defense for Policy and Director of Defense for Research and Engineering to be appointed from civilian life by the President with the advice and consent of the Senate and prohibiting the appointment as Under Secretary of Defense for Policy of a person within ten years after relief from active duty as a commissioned officer of a regular component of an armed force. See section 134 of this title.

Pub. L. 99–348, § 501(b)(1), substituted ''is an Under Secretary of Defense for Policy and a Director of Defense Research and Engineering'' for ''are two Under Secretaries of Defense, one of whom shall be the Under Secretary of Defense for Policy and one of whom shall be the Under Secretary of Defense for Research and Engineering'' and ''They shall'' for ''The Under Secretaries of Defense shall''.

Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section identically adding subsec. (b) and striking out former subsec. (b) which read as follows: ''The Director of Defense Research and Engineering shall perform such duties relating to research and engineering as the Secretary of Defense may prescribe, including—

''(1) being the principal adviser to the Secretary on scientific and technical matters;

''(2) supervising all research and engineering activities in the Department of Defense; and

''(3) directing, controlling, assigning, and reassigning research and engineering activities that the Secretary considers need centralized management.''

Pub. L. 99–433, § 105(2), struck out provisions that the Under Secretary of Defense for Policy would perform duties and exercise powers as the Secretary of Defense might prescribe.

Pub. L. 99–348, § 501(b)(2), substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

Subsec. (c). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section identically striking out subsec. (c) which read as follows: ''The Director of Defense Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.''

Pub. L. 99–433, § 105(2), struck out provisions that the Under Secretary of Defense for Policy would take precedence in the Department of Defense after Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments.

Pub. L. 99–348, § 501(b)(2), substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

1977—Pub. L. 95–140, § 2(a)(4), substituted ''Under Secretaries of Defense'' for ''Director of Defense Research and Engineering'' in section catchline.

Subsec. (a). Pub. L. 95–140, § 2(a)(1), substituted provisions relating to the appointment of the Under Secretary of Defense for Policy and the Under Secretary of Defense for Research and Engineering for provisions relating to the appointment of the Director of Defense Research and Engineering and inserted provisions relating to the prohibition of the appointment of a person as Under Secretary of Defense for policy within ten years after relief from active duty as a commissioned officer of an armed force.

Subsec. (b). Pub. L. 95–140, § 2(a)(2), substituted ''The Under Secretary of Defense for Policy shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Under Secretary of Defense for Research and Engineering shall perform'' for ''The Director performs''.

Subsec. (c). Pub. L. 95–140, § 2(a)(3), substituted ''Under Secretary of Defense for Policy'' for ''Director'' and ''Deputy Secretary'' for ''Deputy Secretaries'' and inserted provision that the Under Secretary of Defense for Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.

1972—Subsec. (c). Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out as a note under section 3347 of Title 5, Government Organization and Employees.

REDESIGNATION OF POSITION OF UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING; EFFECT ON INDIVIDUAL HOLDING POSITION

Section 501(b)(3) of Pub. L. 99–348 provided that: ''The redesignation by paragraph (1) [amending this section] of the position of Under Secretary of Defense for Research and Engineering as Director of Defense Research and Engineering does not affect the appointment to such position of the individual holding such position on the date of the enactment of this Act [July 1, 1986].''

EMERGENCY FUND FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Pub. L. 89–37, title III, § 305, June 11, 1965, 79 Stat. 128, which provided that no funds were to be appropriated after June 30, 1966, to or for the use of any armed force of the United States for use as an emergency fund for research, development, test, and evaluation, or procurement or production related thereto unless the appropriation of such funds has been authorized by legislation enacted after that date, was repealed and restated as subsec. (i) of section 138 [now § 114(d)] of this title by Pub. L. 97–295, §§ 1(4), 6(b), Oct. 12, 1982, 96 Stat. 1289, 1314.

§ 138. Assistant Secretaries of Defense

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

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

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

(3)(A) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.

(B) Notwithstanding subparagraph (A), one of the Assistant Secretaries established by the Secretary of Defense may be an Assistant Secretary of Defense for Intelligence, who shall have as his principal duty the overall supervision of intelligence affairs of the Department of Defense.

(C) If the Secretary of Defense establishes an Assistant Secretary of Defense for Intelligence, the Assistant Secretary provided for under subparagraph (A) shall be the Assistant Secretary of Defense for Command, Control, and Communications and shall have as his principal duty the overall supervision of command, control, and communications affairs of the Department of Defense.

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

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

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

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

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

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

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 518, §136; amended Pub. L. 90–168, §2(1), (2), Dec. 1, 1967, 81 Stat. 521; Pub. L. 91–121, title IV, §404(a), Nov. 19, 1969, 83 Stat. 207; Pub. L. 92–215, §1, Dec. 22, 1971, 85 Stat. 777; Pub. L. 92–596, §4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, §3(a), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 96–107, title VIII, §820(a), Nov. 9, 1979, 93 Stat. 819; Pub. L. 98–94, title XII, §1212(a), Sept. 24, 1983, 97 Stat. 686; Pub. L. 99–433, title I, §§106, 110(d)(9), Oct. 1, 1986, 100 Stat. 997, 1003; Pub. L. 99–500, §101(c) [title IX, §9115(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–122, and Pub. L. 99–591, §101(c) [title IX, §9115(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–122; Pub. L. 99–661, div. A, title XIII, §1311(a), Nov. 14, 1986, 100 Stat. 3983; Pub. L. 100–180, div. A, title XII, §1211(a)(1), Dec. 4, 1987, 101 Stat. 1154; Pub. L. 100–453, title VII, §702, Sept. 29, 1988, 102 Stat. 1912; Pub. L. 100–456, div. A, title VII, §701, Sept. 29, 1988, 102 Stat. 1992; renumbered §138 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(1), (c), 903(c)(1), 905, Nov. 30, 1993, 107 Stat. 1726, 1727, 1729; Pub. L. 103–337, div. A, title IX, §§901(a), 903(b)(2), Oct. 5, 1994, 108 Stat. 2822, 2823.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
136(a)	5:171c(c) (1st sentence).	July 26, 1947, ch. 343, §202(c)(7) (less 1st 2 sentences); added Aug. 6, 1958, Pub. L. 85–599, §3(a) (8th par., less 1st 2 sentences), 72 Stat. 516.
136(b)	5:171c(c) (1st 18 words of 2d sentence). 5:171c–2 (less 1st sentence). 5:171n(a) (as applicable to 5:172). 5:172.	July 26, 1947, ch. 343, §203(c); added Aug. 10, 1949, ch. 412, §6(a), (2d par.), 63 Stat. 581; redesignated Aug. 6, 1958, Pub. L. 85–599, §§9(a) (1st par., as applicable to §203(c)), 10(a), 72 Stat. 520, 521. July 26, 1947, ch. 343, §302 (less 1st sentence); restated Aug. 10, 1949, ch. 412, §10(b) (less 1st sentence) restated Aug. 10, 1956, ch. 1041, §21 (less 1st sentence), 70A Stat. 629. July 26, 1947, ch. 343, §308(a) (as applicable to §401), 61 Stat. 509. July 26, 1947, ch. 343, §401; added Aug. 10, 1949, ch. 412, §11 (1st 2 pars.), 63 Stat. 585.
136(c).	5:171a(c)(7) (3rd sentence).	
136(d).	5:171a(c)(7) (less 1st 3 sentences).	
136(e).	5:171c(c) (less 1st sentence and less 1st 18 words of 2d sentence).	

In subsection (b)(1), 5 U.S.C. 172(b) (last 13 words of 1st sentence) is omitted as surplusage, since they are only a general description of the powers of the Secretary of Defense under this title. 5 U.S.C. 171c–2 (less 1st sentence) is omitted as covered by 5 U.S.C. 171c(c) (1st 18 words of 2d sentence).

In subsection (d), the following substitutions are made: ''In carrying out subsection (c) and sections 3010, 3012(b) (last two sentences), 5011 (first two sentences), 5031(a) (last two sentences), 8010, and 8012(b) last two sentences of this title,'' for ''In implementation of this paragraph''; and ''members of the armed forces under the jurisdiction of his department'' for ''the military personnel in such department''. The words ''in a continuous effort'' are omitted as surplusage.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 138 was renumbered section 139 of this title.

Another prior section 138 was renumbered by Pub. L. 99–433 as follows:

Section 138(a) was renumbered section 114(a) of this title.

Section 138(b) was renumbered successively as section 114(b) and section 115(a) of this title.

Section 138(c) was renumbered successively as section 114(c) and section 115(b) of this title.

Section 138(d) was renumbered successively as section 114(d) and section 115(c) of this title.

Section 138(e) was renumbered successively as section 114(e) and section 116(a) of this title.

Section 138(f)(1) was renumbered successively as section 114(f)(1) and section 114(b) of this title.

Section 138(f)(2) was renumbered successively as section 114(f)(2) and section 116(b) of this title.

Section 138(g) was renumbered successively as section 114(g) and section 114(c) of this title.

Section 138(h) was renumbered successively as section 114(h) and section 113(i) of this title.

Section 138(i) was renumbered successively as section 114(i) and section 114(d) of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 901(a), substituted ''eleven'' for ''ten''.

Subsec. (d). Pub. L. 103–337, § 903(b)(2), struck out ''and Comptroller'' after ''Under Secretaries of Defense''.

1993—Pub. L. 103–160, § 901(a)(1), renumbered section 136 of this title as this section.

Subsec. (a). Pub. L. 103–160, § 903(c)(1), substituted ''ten'' for ''eleven''.

Subsec. (b)(5). Pub. L. 103–160, § 905, added par. (5).

Subsec. (d). Pub. L. 103–160, § 901(c), inserted ''and Comptroller'' after ''Under Secretaries of Defense''.

1988—Subsec. (b)(3). Pub. L. 100–453 and Pub. L. 100–456 generally amended par. (3) identically. Prior to amendment, par. (3) read as follows: ''One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.''

1987—Subsec. (b)(4). Pub. L. 100–180 inserted at end ''The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense.''

1986—Pub. L. 99–433, § 110(d)(9), struck out '': appointment; powers and duties; precedence'' at end of section catchline.

Subsec. (b)(2), (3). Pub. L. 99–433, § 106(a)(1), (2), redesignated pars. (4) and (5) as pars. (2) and (3), respectively, and struck out former par. (2) relating to the Assistant Secretary of Defense for Health Affairs and former par. (3) relating to the Assistant Secretary of Defense for Manpower and Logistics.

Subsec. (b)(4). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, adding par. (4).

Pub. L. 99–433, § 106(a)(2), redesignated par. (4) as (2).

Subsec. (b)(5). Pub. L. 99–433, § 106(a)(2), redesignated par. (5) as (3).

Subsec. (b)(6). Pub. L. 99–433, § 106(a)(3), struck out par. (6) relating to Comptroller of Department of Defense. See section 135 of this title.

Subsec. (c)(1). Pub. L. 99–433, § 106(c)(1)(A), substituted ''the Assistant Secretary'' for ''him''.

Subsec. (c)(2). Pub. L. 99–433, § 106(c)(1)(B), struck out '', or his designee'' after ''concerned''.

Subsecs. (d), (e). Pub. L. 99–433, § 106(b), (c)(2), (3), redesignated subsec. (e) as (d), substituted ''the Under Secretaries of Defense, and the Director of Defense Research and Engineering'' for ''and the Under Secretaries of Defense'', inserted sentence directing that the Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense, and struck out former subsec. (d) which directed the Secretary of each military department, his civilian assistants, and members of the armed forces under the jurisdiction of his department to cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

1983—Subsec. (a). Pub. L. 98–94, § 1212(a)(1), substituted ''eleven'' for ''seven''.

Subsec. (b)(1). Pub. L. 98–94, § 1212(a)(2)(A), designated existing first sentence as par. (1).

Subsec. (b)(2). Pub. L. 98–94, § 1212(a)(2)(B), designated existing second and third sentences as par. (2).

Subsec. (b)(3). Pub. L. 98–94, § 1212(a)(2)(C), (D), designated existing fourth and fifth sentences as par. (3) and substituted ''Logistics'' for ''Reserve Affairs'' and ''logistics'' for ''reserve component''.

Subsec. (b)(4), (5). Pub. L. 98–94, § 1212(a)(2)(E), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 98–94, § 1212(a)(2)(F), designated existing sixth sentence as par. (6), substituted ''One of the Assistant Secretaries'' for ''In addition, one of the Assistant Secretaries'', redesignated pars. (1) to (5) as subpars. (A) to (E), respectively, redesignated former subpars. (A) to (D) as cls. (1) to (4), respectively, and in subpar. (E) substituted ''clauses (A) through (D)'' for ''clauses (1)–(4)''.

Subsec. (f). Pub. L. 98–94, § 1212(a)(3), struck out subsec. (f) which provided for appointment of a Deputy Assistant Secretary of Defense for Reserve Affairs within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs. See subsec. (b)(4) of this section.

1979—Subsec. (a). Pub. L. 96–107 substituted ''seven'' for ''nine''.

1977—Subsec. (e). Pub. L. 95–140 inserted ''of Defense'' after ''Secretary'' and substituted ''Secretary of Defense'' for ''Secretaries of Defense'' and '', and the Under Secretaries of Defense'' for '', and the Director of Defense Research and Engineering''.

1972—Subsec. (e). Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary''.

1971—Subsec. (a). Pub. L. 92–215 substituted ''nine'' for ''eight''.

1969—Subsec. (a). Pub. L. 91–121, § 404(a)(1), substituted ''eight'' for ''seven''.

Subsec. (b). Pub. L. 91–121, § 404(a)(2), provided for an Assistant Secretary of Defense for Health Affairs having as his principal duty the overall supervision of health affairs of Department of Defense.

1967—Subsec. (b). Pub. L. 90–168, § 2(1), inserted provisions for an Assistant Secretary of Defense for Manpower and Reserve Affairs with principal duty of overall supervision of manpower and reserve component affairs of Department of Defense.

Subsec. (f). Pub. L. 90–168, § 2(2), added subsec. (f).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1212(e) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section, sections 175, 3013, and 5034 of this title, and section 5315 of Title 5, Government Organization and Employees] shall take effect on October 1, 1983.''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 7 of Pub. L. 90–168 provided that: ''The provisions of this Act [see Short Title of 1967 Amendment note below] shall become effective on the first day of the first calendar month following the date of enactment [Dec. 1, 1967].''

SHORT TITLE OF 1967 AMENDMENT

Section 1 of Pub. L. 90–168 provided: ''That this Act [amending this section, sections 175, 262, 264, 268, 269, 270, 511 [now 12103], 3014, 5034, 8014, and 8850 of this title, section 502 of Title 32, National Guard, and section 404 of Title 37, Pay and Allowances of the Uniformed Services, enacting sections 3021 [now 10302], 3038, 8021 [now 10305], and 8038 of this title, enacting provisions set out as notes under this section and section 8212 of this title, and amending provisions set out as a note under section 113 of this title] may be cited as the 'Reserve Forces Bill of Rights and Vitalization Act'.''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CHARTER OF THE ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT

Section 1211(a)(2)–(5) of Pub. L. 100–180 provided that:

''(2) The Secretary of Defense shall publish a directive setting forth the charter of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987]. The directive shall set forth—

''(A) the duties and responsibilities of the Assistant Secretary;

''(B) the relationships between the Assistant Secretary and other Department of Defense officials;

''(C) any delegation of authority from the Secretary of Defense to the Assistant Secretary; and

''(D) such other matters as the Secretary considers appropriate.

''(3) On the date that such directive is published, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(A) a copy of the directive; and

''(B) a report explaining how the charter of the Assistant Secretary fulfills the provisions of section 136(b)(4) [now 138(b)(4)] of title 10, United States Code (as amended by paragraph (1)), that provide that the Assistant Secretary—

''(i) exercises overall supervision of special operations activities and low intensity conflict activities of the Department of Defense;

''(ii) is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters; and

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

''(4)(A) Until the office of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict is filled for the first time by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of the Army shall carry out the duties and responsibilities of that office.

''(B) Throughout the period of time during which the Secretary of the Army is carrying out the duties and responsibilities of that office, he shall submit to the Committees on Armed Services of the Senate and House of Representatives a monthly report on the administrative actions that he has taken and the policy guidance that he has issued to carry out such duties and responsibilities. Each such report shall also describe the actions that he intends to take and the guidance that he intends to issue to fulfill the provisions of section 136(b)(4) [now 138(b)(4)] of title 10, United States Code (as amended by paragraph (1)), along with a timetable for completion of such actions and issuance of such guidance. The first such report shall be submitted not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987].

''(5) Until the first individual appointed to the position of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict by the President, by and with the advice and consent of the Senate, leaves that office, that Assistant Secretary (and the Secretary of the Army when carrying out the duties and responsibilities of the Assistant Secretary) shall, with respect to the duties and responsibilities of that office, report directly, without intervening review or approval, to the Secretary of Defense personally or, as designated by the Secretary, to the Deputy Secretary of Defense personally.''

TEMPORARY INCREASE IN NUMBER OF ASSISTANT SECRETARIES OF DEFENSE

Section 1311 of Pub. L. 100–180 provided that until Jan. 20, 1989, the number of Assistant Secretaries of Defense authorized under subsec. (a) of this section and the number of positions at level IV of the Executive Schedule are each increased by one (to a total of 12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10201 of this title.

§139. Director of Operational Test and Evaluation

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

(2) In this section:

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

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

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

(B) The term ''major defense acquisition program'' means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title or that is designated as such a program by the Director for purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added Pub. L. 98–94, title XII, § 1211(a)(1), Sept. 24, 1983, 97 Stat. 684, § 136a; amended Pub. L. 99–348, title V, § 501(c), July 1, 1986, 100 Stat. 708; renumbered § 138 and amended Pub. L. 99–433, title I, §§ 101(a)(7), 110(d)(10), (g)(1), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, §§ 903(c), 910(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, 1783–145, and Pub. L. 99–591, § 101(c) [title X, §§ 903(c), 910(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132, 3341–145; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 903(c), 910(c), Nov. 14, 1986, 100 Stat. 3912, 3924, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(a)(1), (c)(2), Apr. 21, 1987, 101 Stat. 275, 280; Pub. L. 100–180, div. A, title VIII, § 801, Dec. 4, 1987, 101 Stat. 1123; Pub. L. 101–189, div. A, title VIII, § 802(b), title XVI, § 1622(e)(1), Nov. 29, 1989, 103 Stat. 1486, 1605; Pub. L. 101–510, div. A, title XIV, § 1484(k)(1), Nov. 5, 1990, 104 Stat. 1719; renumbered § 139 and amended Pub. L. 103–160, div. A, title IX, §§ 901(a)(1), 904(d)(1), 907, Nov. 30, 1993, 107 Stat. 1726, 1728, 1730; Pub. L. 103–355, title III, §§ 3011–3013, Oct. 13, 1994, 108 Stat. 3331, 3332.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

Another prior section 139 was renumbered section 2431 of this title.

AMENDMENTS

1994—Subsec. (b)(6). Pub. L. 103–355, § 3012(a), added par. (6).

Subsec. (c). Pub. L. 103–355, § 3011, inserted "The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense." after "(c)".

Subsec. (f). Pub. L. 103–355, §§ 3012(b), 3013, in first sentence inserted "(including live fire testing activities)" after "operational test and evaluation activities" and after second sentence inserted "If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress."

1993—Pub. L. 103–160, § 901(a)(1), renumbered section 138 of this title as this section.

Subsec. (b). Pub. L. 103–160, § 904(d)(1), substituted "Under Secretary of Defense for Acquisition and Technology" for "Under Secretary of Defense for Acquisition" in introductory provisions and in par. (2).

Subsec. (c). Pub. L. 103–160, § 907, struck out "The Director reports directly, without intervening review or approval, to the Secretary of Defense personally." after "(c)" and substituted "Under Secretary of Defense for Acquisition and Technology" for "Director of Defense Research and Engineering" and "responsible for acquisition" for "responsible for research and development".

Subsec. (f). Pub. L. 103–160, §904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (a)(2)(A). Pub. L. 101–510, §1484(k)(1)(A), substituted ''(A) The term 'operational test and evaluation'' for ''(A) 'Operational test and evaluation''.

Subsec. (a)(2)(B). Pub. L. 101–510, §1484(k)(1)(B), substituted ''(B) The term 'major defense acquisition program'' for ''(B) 'Major defense acquisition program''.

1989—Subsec. (a)(2)(A). Pub. L. 101–189, §1622(e)(1)(A), which directed amendment of subpar. (A) by substituting ''(A) The term 'operational'' '' for ''(A) 'Operational'' '', could not be executed because a closing quotation mark did not follow ''Operational''.

Subsec. (a)(2)(B). Pub. L. 101–189, §1622(e)(1)(B), which directed amendment of subpar. (B) by substituting ''(B) The term 'major'' '' for ''(B) 'Major'' '', could not be executed because a closing quotation mark did not follow ''Major''.

Subsec. (b)(4). Pub. L. 101–189, §802(b)(1)(A), inserted ''and'' after ''defense agency;''.

Subsec. (b)(5), (6). Pub. L. 101–189, §802(b)(1)(B), (C), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''analyze the results of the operational test and evaluation conducted for each major defense acquisition program and, at the conclusion of such operational test and evaluation, report to the Secretary of Defense, to the Under Secretary of Defense for Acquisition, and to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives as provided in subsection (c) on—

''(A) whether the test and evaluation performed was adequate; and

''(B) whether the test and evaluation results confirm that the items or components actually tested are effective and suitable for combat; and''.

Subsec. (c). Pub. L. 101–189, §802(b)(2), (3), redesignated subsec. (d)(1) as (c) and struck out former subsec. (c) which read as follows: ''Each report of the Director required under subsection (b)(5) shall be submitted to the committees specified in that subsection in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary of Defense and the Under Secretary of Defense for Acquisition and shall be accompanied by such comments as the Secretary may wish to make on the report.''

Subsec. (d). Pub. L. 101–189, §802(b)(4), redesignated former par. (2) of subsec. (d) as entire subsec. Former par. (1) of subsec. (d) redesignated subsec. (c).

Subsec. (f). Pub. L. 101–189, §802(b)(5)–(7), redesignated subsec. (g)(1) as (f), substituted ''this subsection'' for ''this paragraph'', and struck out former subsec. (f) which read as follows:

''(1) Operational testing of a major defense acquisition program may not be conducted until the Director has approved in writing the adequacy of the plans (including the adequacy of projected levels of funding) for operational test and evaluation to be conducted in connection with that program.

''(2) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program required by subsection (b)(5) and the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have received that report.''

Subsec. (g). Pub. L. 101–189, §802(b)(6), (8), redesignated former par. (2) of subsec. (g) as entire subsec. (g), and redesignated former par. (1) of subsec. (g) as subsec. (f).

1987—Subsec. (a)(2)(B). Pub. L. 100–26, §7(c)(2), substituted ''section 2430'' for ''section 2432(a)(1)''.

Subsec. (c). Pub. L. 100–26, §7(a)(1), substituted ''to the Secretary of Defense and the Under Secretary of Defense for Acquisition and shall be accompanied by such comments as the Secretary may wish to make on the report.'' for ''to the Secretary, to the Under Secretary of Defense for Acquisition, and shall be accompanied by such comments as the Secretary of Defense may wish to make on such report.''

Subsec. (d). Pub. L. 100–180 designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433, §§101(a)(7), 110(d)(10), renumbered section 136a of this title as this section, and struck out '': appointment; powers and duties'' at end of section catchline.

Subsec. (a)(2)(B). Pub. L. 99–433, §110(g)(1), substituted ''section 2432(a)(1)'' for ''section 139a(a)(1)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(1)–(3)] and Pub. L. 99–661, §903(c)(1)–(3), amended subsec. (b) identically, in provisions preceding par. (1) and in par. (2), inserting ''and the Under Secretary of Defense for Acquisition'' and, in par. (5), inserting '', to the Under Secretary of Defense for Acquisition,''.

Subsec. (c). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(4)], and Pub. L. 99–661, §903(c)(4), amended subsec. (c) identically by directing the insertion of '', to the Under Secretary of Defense for Acquisition,'' after ''Secretary of Defense'' the first place it appears which was executed by making the insertion after ''the Secretary'' the first place it appears as the probable intent of Congress.

Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(5)], and Pub. L. 99–661, §903(c)(5), amended subsec. (d) identically inserting ''personally'' after ''Secretary of Defense''.

Pub. L. 99–348 substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

Subsec. (g)(1). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§§903(c)(6), 910(c)], and Pub. L. 99–661, §§903(c)(6), 910(c), amended par. (1) identically, inserting '', the Under Secretary of Defense for Acquisition,'' and substituting ''10 days after transmission of the budget for the next fiscal year under section 1105 of title 31'' for ''January 15 immediately following the end of the fiscal year for which the report is prepared''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(7)], and Pub. L. 99–661, §903(c)(7), amended section identically adding subsec. (i).

EFFECTIVE DATE

Section 1211(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall take effect on November 1, 1983.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2399 of this title.

[§139a. Renumbered §2432]

[§139b. Renumbered §2433]

[§139c. Renumbered §2434]

§140. General Counsel

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

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

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 519, §137; amended Pub. L. 88–426, title III, §305(9), Aug. 14, 1964, 78 Stat. 423; renumbered §139 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(d)(11), Oct. 1, 1986, 100 Stat. 995, 1003; renumbered §140, Pub. L. 103–160, div. A, title IX, §901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
137(a)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4 (1st 25 words of 1st sentence), 67 Stat. 639].	1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4, 67 Stat. 639.
137(b)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4 (1st sentence, less 1st 25 words), 67 Stat. 639].	
137(c)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, § 4 (2d sentence), 67 Stat. 639].	

In subsection (b), the words ''from time to time'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 140 was renumbered section 141 of this title.

Another prior section 140 was renumbered section 127 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 139 of this title as this section.

1986—Pub. L. 99–433, §§ 101(a)(7), 110(d)(11), renumbered section 137 of this title as this section, and struck out '': powers and duties'' at end of section catchline.

1964—Subsec. (c). Pub. L. 88–426 repealed subsec. (c) which related to compensation of General Counsel. See section 5315 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Compensation of General Counsel, see section 5315 of Title 5, Government Organization and Employees.

[§ 140a. Renumbered § 422]

PRIOR PROVISIONS

A prior section 140a was renumbered section 421 of this title.

[§ 140b. Renumbered § 423]

PRIOR PROVISIONS

A prior section 140b was renumbered section 129 of this title.

[§ 140c. Renumbered § 130]

§ 141. Inspector General

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

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

(Added Pub. L. 99–433, title I, § 108, Oct. 1, 1986, 100 Stat. 998, § 140; renumbered § 141, Pub. L. 103–160, div. A, title IX, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 141 was renumbered section 142 of this title.

Another prior section 141 of this title was contained in chapter 5 of this title, prior to amendment by Pub. L. 99–433. See note preceding section 151 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 140 of this title as this section.

§ 142. Assistant to the Secretary of Defense for Atomic Energy

(a) There is an Assistant to the Secretary of Defense for Atomic Energy, appointed by the President, by and with the advice and consent of the Senate.

(b) The Assistant to the Secretary shall advise the Secretary of Defense and the Nuclear Weapons Council on nuclear energy and nuclear weapons matters.

(Added Pub. L. 100–180, div. A, title XII, § 1245(a)(1), Dec. 4, 1987, 101 Stat. 1165, § 141; renumbered § 142, Pub. L. 103–160, div. A, title IX, § 901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

PRIOR PROVISIONS

A prior section 142 of this title was contained in chapter 5 of this title, prior to amendment by Pub. L. 99–433. See note preceding section 151 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 141 of this title as this section.

EXCEPTION TO SENATE CONFIRMATION REQUIREMENT

Section 1245(b) of Pub. L. 100–180 provided that: ''The person serving as Chairman of the Military Liaison Committee, Department of Defense, under section 27 of the Atomic Energy Act of 1946 (42 U.S.C. 2037) on October 16, 1986, may be appointed as the Assistant to the Secretary of Defense for Atomic Energy under section 141 [now 142] of title 10, United States Code (as added by subsection (a)), without the advice and consent of the Senate.''

CHAPTER 5—JOINT CHIEFS OF STAFF

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

PRIOR PROVISIONS

A prior chapter 5 related to Joint Chiefs of Staff, prior to the general revision of this chapter by Pub. L. 99–433, title II, § 201, Oct. 1, 1986, 100 Stat. 1004, consisted of sections 141 to 143 as follows:

Section 141, acts Aug. 10, 1956, ch. 1041, 70A Stat. 6; Aug. 6, 1958, Pub. L. 85–599, § 7, 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–651, title II, § 204, 76 Stat. 519; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 807, 92 Stat. 1622, provided for composition and functions of Joint Chiefs. See section 151 of this title.

Section 142, acts Aug. 10, 1956, ch. 1041, 70A Stat. 7; Sept. 7, 1962, Pub. L. 87–649, § 14c(1), 76 Stat. 501; Oct. 19, 1984, Pub. L. 98–525, title XIII, § 1301(b), 98 Stat. 2611,

provided for appointment and duties of Chairman of Joint Chiefs. See sections 152 and 153 of this title.

Section 143, acts Aug. 10, 1956, ch. 1041, 70A Stat. 7; Aug. 6, 1958, Pub. L. 85–599, §5(a), 72 Stat. 517; Oct. 19, 1984, Pub. L. 98–525, title XIII, §1301(c), 98 Stat. 2611, provided for a Joint Staff. See section 155 of this title.

AMENDMENTS

1987—Pub. L. 100–180, div. A, title XIII, §1314(b)(1)(B), Dec. 4, 1987, 101 Stat. 1175, substituted ''grade and rank'' for ''rank'' in item 152.

1986—Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1005, amended chapter 5 heading and analysis generally, substituting items 151–155 for items 141–143.

§151. Joint Chiefs of Staff: composition; functions

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

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

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

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

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

(A) the other members of the Joint Chiefs of Staff; and

(B) the commanders of the unified and specified combatant commands.

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

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

(2) The Chairman shall establish procedures to ensure that the presentation of his own advice to the President, the National Security Council, or the Secretary of Defense is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Joint Chiefs of Staff.

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

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

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

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

(A) preside over the Joint Chiefs of Staff;

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

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

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

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1005; amended Pub. L. 102–484, div. A, title IX, §911(a), Oct. 23, 1992, 106 Stat. 2473.)

AMENDMENTS

1992—Subsec. (a)(2) to (6). Pub. L. 102–484 added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

CROSS REFERENCES

Chief of Naval Operations, generally, see section 5031 et seq. of this title.

Chief of Staff of the Army or Air Force, appointment and duties, see sections 3033, 8033 of this title.

Commandant of the Marine Corps, appointment, term and emoluments, see section 5043 of this title.

Detail or assignment of officers to Office of the Secretary of Defense, see section 131 of this title.

National Security Council, establishment and functions, see section 402 of Title 50, War and National Defense.

Selection of Director of the Joint Staff, see section 155 of this title.

United Nations Organization—

Personal money allowance of officers serving as members of Military Staff Committee, see section 414 of Title 37, Pay and Allowances of the Uniformed Services.

Representation, see section 287 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3033, 5033, 5043, 8033 of this title.

§152. Chairman: appointment; grade and rank

(a) APPOINTMENT; TERM OF OFFICE.—(1) There is a Chairman of the Joint Chiefs of Staff, ap-

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

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

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

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

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

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

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

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

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

(Added Pub. L. 99–433, title II, § 201, Oct. 1, 1986, 100 Stat. 1006; amended Pub. L. 100–180, div. A, title XIII, § 1314(b)(1)(A), Dec. 4, 1987, 101 Stat. 1175.)

AMENDMENTS

1987—Pub. L. 100–180 substituted ''grade and rank'' for ''rank'' in section catchline.

CROSS REFERENCES

Armed Forces Policy Council, member of, see section 171 of this title.

Management of Joint Staff and its director, see section 155 of this title.

Pay and allowances—

Chairman, see section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Grade of general or admiral, see sections 3033, 5033, 5043, and 8033 of this title; sections 203, 402, 403, and 1009 of Title 37.

Personal money allowance, see section 414 of Title 37.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 163 of this title.

§ 153. Chairman: functions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Assessing military requirements for defense acquisition programs.

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

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

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

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

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

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

(A) Changes in the nature of the threats faced by the United States.

(B) Unnecessary duplication of effort among the armed forces.

(C) Changes in technology that can be applied effectively to warfare.

(2) The Chairman shall include in each such report recommendations for such changes in policies, directives, regulations, and legislation as may be necessary to achieve the changes in the assignment of functions recommended by the Chairman.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1007.)

ANNUAL ASSESSMENT OF FORCE READINESS

Pub. L. 103–160, div. A, title III, §376, Nov. 30, 1993, 107 Stat. 1637, provided that:

''(a) ANNUAL ASSESSMENT REQUIRED.—Not later than March 1 of each of 1994, 1995, and 1996, the Chairman of the Joint Chiefs of Staff shall submit to the Congress an assessment of—

''(1) the readiness and capability of the Armed Forces to carry out the full range of the missions assigned to the Armed Forces; and

''(2) the associated level or degree of risk for the Armed Forces in responding to current and anticipated threats to national security interests of the United States.

''(b) CONTENT OF ASSESSMENT.—Each assessment shall include, for the five-year period described in subsection (c), the following matters:

''(1) An unclassified description of the current and projected readiness and capability of the Armed Forces taking into consideration each of the following areas:

''(A) Personnel.

''(B) Training and exercises.

''(C) Logistics, including equipment maintenance and supply availability.

''(D) Equipment modernization.

''(E) Installations, real property, and facilities.

''(F) Munitions.

''(G) Mobility.

''(H) Wartime sustainability.

''(2) The personal assessment of the Chairman of the Joint Chiefs of Staff regarding the readiness and capabilities of the Armed Forces, together with the Chairman's personal judgment on whether there are significant problems or risks regarding the readiness and capabilities of the Armed Forces.

''(3) Any factors that the Chairman or any other member of the Joint Chiefs of Staff believes may lead to a decrease in force readiness or a degradation in the overall capability of the Armed Forces.

''(4) Any recommended actions that the Chairman of the Joint Chiefs of Staff considers appropriate.

''(5) Any classified annexes that the Chairman of the Joint Chiefs of Staff considers appropriate.

''(c) PERIOD ASSESSED.—The assessment shall include information for the fiscal year in which the assessment is submitted, the three preceding fiscal years, and projections for the subsequent fiscal year.

''(d) INTERIM ASSESSMENTS.—If, at any time between submissions of assessments to the Congress under subsection (a), the Chairman of the Joint Chiefs of Staff determines that there is a significant change in the projected readiness or capability of the Armed Forces from the readiness or capability projected in the most recent annual assessment, the Chairman shall submit to the Congress a revised assessment that reflects each such significant change.''

ANNUAL ASSESSMENT OF FORCE READINESS

Pub. L. 103–160, div. A, title III, §376, Nov. 30, 1993, 107 Stat. 1637, provided that:

''(a) ANNUAL ASSESSMENT REQUIRED.—Not later than March 1 of each of 1994, 1995, and 1996, the Chairman of the Joint Chiefs of Staff shall submit to the Congress an assessment of—

''(1) the readiness and capability of the Armed Forces to carry out the full range of the missions assigned to the Armed Forces; and

''(2) the associated level or degree of risk for the Armed Forces in responding to current and anticipated threats to national security interests of the United States.

''(b) CONTENT OF ASSESSMENT.—Each assessment shall include, for the five-year period described in subsection (c), the following matters:

''(1) An unclassified description of the current and projected readiness and capability of the Armed Forces taking into consideration each of the following areas:

''(A) Personnel.

''(B) Training and exercises.

''(C) Logistics, including equipment maintenance and supply availability.

''(D) Equipment modernization.

''(E) Installations, real property, and facilities.

''(F) Munitions.

''(G) Mobility.

''(H) Wartime sustainability.

''(2) The personal assessment of the Chairman of the Joint Chiefs of Staff regarding the readiness and capabilities of the Armed Forces, together with the Chairman's personal judgment on whether there are significant problems or risks regarding the readiness and capabilities of the Armed Forces.

''(3) Any factors that the Chairman or any other member of the Joint Chiefs of Staff believes may lead to a decrease in force readiness or a degradation in the overall capability of the Armed Forces.

''(4) Any recommended actions that the Chairman of the Joint Chiefs of Staff considers appropriate.

''(5) Any classified annexes that the Chairman of the Joint Chiefs of Staff considers appropriate.

''(c) PERIOD ASSESSED.—The assessment shall include information for the fiscal year in which the assessment is submitted, the three preceding fiscal years, and projections for the subsequent fiscal year.

''(d) INTERIM ASSESSMENTS.—If, at any time between submissions of assessments to the Congress under subsection (a), the Chairman of the Joint Chiefs of Staff determines that there is a significant change in the projected readiness or capability of the Armed Forces from the readiness or capability projected in the most recent annual assessment, the Chairman shall submit to the Congress a revised assessment that reflects each such significant change.''

REPORT OF CHAIRMAN OF JOINT CHIEFS OF STAFF ON ROLES AND MISSIONS OF ARMED FORCES

Pub. L. 102–484, div. A, title IX, § 901, Oct. 23, 1992, 106 Stat. 2469, provided that:

''(a) REPORT.—(1) The Secretary of Defense shall transmit to Congress a copy of the first report relating to the roles and missions of the Armed Forces that is submitted to the Secretary by the Chairman of the Joint Chiefs of Staff under section 153(b) of title 10, United States Code, after January 1, 1992.

''(2) The Secretary shall transmit the report, together with his views on the report, within 30 days after receiving the report.

''(b) ADDITIONAL MATTERS.—In addition to the matters required under such section 153(b), the Chairman shall include in the report referred to in subsection (a) the Chairman's comments and recommendations regarding the following matters:

''(1) Reassessing the roles and missions assigned to each of the Armed Forces (under the Key West agreement of 1947 and subsequent actions by the various Secretaries of Defense and the Congress) in light of the new national security environment resulting from the end of the Cold War.

''(2) The extent to which the efficiency of the Armed Forces in carrying out their roles and missions can be enhanced by—

''(A) the elimination or reduction of duplication in the capabilities of the military departments and Defense Agencies without an undue diminution in their effectiveness; and

''(B) the consolidation or streamlining of organizations and activities within the military departments and Defense Agencies.

''(3) Changes in the operational tempo of forces stationed in the continental United States and changes in deployment patterns and operational tempo of forces deployed outside the United States.

''(4) Changes in the readiness status of units based upon time-phased force deployment plans.

''(5) Transfers of functions from the active components of the Armed Forces to the reserve components of the Armed Forces.''

TRANSITION PROVISIONS

Section 204(a), (b) of Pub. L. 99–433 provided that:

''(a) PREPAREDNESS EVALUATION SYSTEM.—The uniform system of evaluating the preparedness of each unified and specified combatant command required to be established by paragraph (3)(D) of section 153(a) of title 10, United States Code, as added by section 201 of this Act, shall be established not later than one year after the date of the enactment of this Act [Oct. 1, 1986].

''(b) DATE FOR FIRST REPORT.—The first report under section 153(b) of title 10, United States Code, as added by section 201 of this Act, shall be submitted by the Chairman of the Joint Chiefs of Staff not later than two years after the date of the enactment of this Act [Oct. 1, 1986].''

§ 154. Vice Chairman

(a) APPOINTMENT.—(1) There is a Vice Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces.

(2) The Chairman and Vice Chairman may not be members of the same armed force. However, the President may waive the restriction in the preceding sentence for a limited period of time in order to provide for the orderly transition of officers appointed to serve in the positions of Chairman and Vice Chairman.

(3) The Vice Chairman serves at the pleasure of the President for a term of two years and may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.

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

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general or flag officer.

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

(c) DUTIES.—The Vice Chairman performs the duties prescribed for him as a member of the Joint Chiefs of Staff and such other duties as may be prescribed by the Chairman with the approval of the Secretary of Defense.

(d) FUNCTION AS ACTING CHAIRMAN.—When there is a vacancy in the office of Chairman or in the absence or disability of the Chairman, the Vice Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHAIRMAN AND VICE CHAIRMAN.—When there is a vacancy in the offices of both Chairman and Vice Chairman or in the absence or disability of both the Chairman and the Vice Chairman, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the President shall designate a member of the Joint Chiefs of Staff to act as and perform the duties of the Chairman until a successor to the Chairman or Vice Chairman is appointed or the absence or disability of the Chairman or Vice Chairman ceases.

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

(Added Pub. L. 99–433, title II, § 201, Oct. 1, 1986, 100 Stat. 1008; amended Pub. L. 100–456, div. A, title V, § 519(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 102–484, div. A, title IX, § 911(b)(1), Oct. 23, 1992, 106 Stat. 2473.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484, § 911(b)(1)(A), substituted ''the duties prescribed for him as a member of the Joint Chiefs of Staff and such other'' for ''such''.

Subsecs. (f), (g). Pub. L. 102–484, § 911(b)(1)(B), (C), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''PARTICIPATION IN JCS

MEETINGS.—The Vice Chairman may participate in all meetings of the Joint Chiefs of Staff, but may not vote on a matter before the Joint Chiefs of Staff except when acting as Chairman.''

1988—Subsec. (b)(1)(B). Pub. L. 100–456 substituted ''completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''served in at least one joint duty assignment (as defined under section 668(b) of this title)''.

EXTENSION OF TERM OF OFFICE OF VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Pub. L. 100–526, title I, §107, Oct. 24, 1988, 102 Stat. 2625, authorized President to extend until June 1, 1989, term of office of officer serving as Vice Chairman of Joint Chiefs of Staff for term which began on Feb. 6, 1987.

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Section 204(c) of Pub. L. 99–433 authorized President, until Oct. 1, 1990, to waive certain requirements otherwise applicable for appointment of an officer as Vice Chairman of Joint Chiefs of Staff.

§155. Joint Staff

(a) APPOINTMENT OF OFFICERS TO JOINT STAFF.—(1) There is a Joint Staff under the Chairman of the Joint Chiefs of Staff. The Joint Staff assists the Chairman and, subject to the authority, direction, and control of the Chairman, the other members of the Joint Chiefs of Staff in carrying out their responsibilities.

(2) Officers of the armed forces (other than the Coast Guard) assigned to serve on the Joint Staff shall be selected by the Chairman in approximately equal numbers from—

(A) the Army;

(B) the Navy and the Marine Corps; and

(C) the Air Force.

(3) Selection of officers of an armed force to serve on the Joint Staff shall be made by the Chairman from a list of officers submitted by the Secretary of the military department having jurisdiction over that armed force. Each officer whose name is submitted shall be among those officers considered to be the most outstanding officers of that armed force. The Chairman may specify the number of officers to be included on any such list.

(b) DIRECTOR.—The Chairman of the Joint Chiefs of Staff, after consultation with the other members of the Joint Chiefs of Staff and with the approval of the Secretary of Defense, may select an officer to serve as Director of the Joint Staff.

(c) MANAGEMENT OF JOINT STAFF.—The Chairman of the Joint Chiefs of Staff manages the Joint Staff and the Director of the Joint Staff. The Joint Staff shall perform such duties as the Chairman prescribes and shall perform such duties under such procedures as the Chairman prescribes.

(d) OPERATION OF JOINT STAFF.—The Secretary of Defense shall ensure that the Joint Staff is independently organized and operated so that the Joint Staff supports the Chairman of the Joint Chiefs of Staff in meeting the congressional purpose set forth in the last clause of section 2 of the National Security Act of 1947 (50 U.S.C. 401) to provide—

(1) for the unified strategic direction of the combatant forces;

(2) for their operation under unified command; and

(3) for their integration into an efficient team of land, naval, and air forces.

(e) PROHIBITION OF FUNCTION AS ARMED FORCES GENERAL STAFF.—The Joint Staff shall not operate or be organized as an overall Armed Forces General Staff and shall have no executive authority. The Joint Staff may be organized and may operate along conventional staff lines.

(f) TOUR OF DUTY OF JOINT STAFF OFFICERS.—(1) An officer who is assigned or detailed to permanent duty on the Joint Staff may not serve for a tour of duty of more than four years. However, such a tour of duty may be extended with the approval of the Secretary of Defense.

(2) In accordance with procedures established by the Secretary of Defense, the Chairman of the Joint Chiefs of Staff may suspend from duty and recommend the reassignment of any officer assigned to the Joint Staff. Upon receipt of such a recommendation, the Secretary concerned shall promptly reassign the officer.

(3) An officer completing a tour of duty with the Joint Staff may not be assigned or detailed to permanent duty on the Joint Staff within two years after relief from that duty except with the approval of the Secretary.

(4) Paragraphs (1) and (3) do not apply—

(A) in time of war; or

(B) during a national emergency declared by the President or Congress.

(g) COMPOSITION OF JOINT STAFF.—(1) The Joint Staff is composed of all members of the armed forces and civilian employees assigned or detailed to permanent duty in the executive part of the Department of Defense to perform the functions and duties prescribed under subsections (a) and (c).

(2) The Joint Staff does not include members of the armed forces or civilian employees assigned or detailed to permanent duty in a military department.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1009; amended Pub. L. 100–180, div. A, title XIII, §1314(b)(2), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title IX, §902, Nov. 5, 1990, 104 Stat. 1620; Pub. L. 102–484, div. A, title IX, §911(b)(2), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 103–35, title II, §202(a)(8), May 31, 1993, 107 Stat. 101.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484. See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, as amended by Pub. L. 103–35, struck out ''and the Vice Chairman'' before ''in carrying out''.

1990—Subsecs. (g), (h). Pub. L. 101–510 redesignated subsec. (h) as (g) and struck out former subsec. (g) which read as follows: ''LIMITATION ON SIZE OF JOINT STAFF.—(1) Effective on October 1, 1988, the total number of members of the armed forces and civilian personnel assigned or detailed to permanent duty on the Joint Staff may not exceed 1,627.

''(2) Paragraph (1) does not apply—

''(A) in time of war; or

''(B) during a national emergency declared by the President or Congress.''

1987—Subsec. (f)(4)(B). Pub. L. 100–180, §1314(b)(2)(A), inserted ''or Congress'' after ''by the President''.

Subsec. (g)(2)(B). Pub. L. 100–180, § 1314(b)(2)(B), inserted ''the President or'' after ''declared by''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 202(b) of Pub. L. 103–35 provided that: ''The amendments made by this section [amending this section, sections 1079, 1086a, 1174a, 1463, 2323, 2347, 2391, and 2410d of this title, and sections 5013 and 5113 of Title 36, Patriotic Societies and Observances, and amending provisions set out as notes under sections 664, 2350a, 2431, 2501, 2505, 10105, and 12681 of this title and section 5611 of Title 15, Commerce and Trade] shall apply as if included in the enactment of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 525, 664 of this title.

CHAPTER 6—COMBATANT COMMANDS

Sec.
161. Combatant commands: establishment.
162. Combatant commands: assigned forces; chain of command.
163. Role of Chairman of Joint Chiefs of Staff.
164. Commanders of combatant commands: assignment; powers and duties.
165. Combatant commands: administration and support.
166. Combatant commands: budget proposals.
166a. Combatant commands: funding through the Chairman of Joint Chiefs of Staff.
167. Unified combatant command for special operations forces.
168. Military-to-military contacts and comparable activities.

PRIOR PROVISIONS

Prior to enactment of this chapter by Pub. L. 99–433, provisions relating to combat commands were contained in section 124 of this title.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XIII, § 1316(a)(2), Oct. 5, 1994, 108 Stat. 2899, added item 168.

1991—Pub. L. 102–190, div. A, title IX, § 902(b), Dec. 5, 1991, 105 Stat. 1451, added item 166a.

1986—Pub. L. 99–500, § 101(c) [title IX, § 9115(b)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–124, and Pub. L. 99–591, § 101(c) [title IX, § 9115(b)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–124; Pub. L. 99–661, div. A, title XIII, § 1311(b)(2), Nov. 14, 1986, 100 Stat. 3985, amended analysis identically adding item 167.

Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1012, added chapter 6 heading and analysis.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3013, 3033, 5013, 5033, 5043, 8013, 8033 of this title.

§ 161. Combatant commands: establishment

(a) UNIFIED AND SPECIFIED COMBATANT COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands and specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

(b) PERIODIC REVIEW.—(1) The Chairman periodically (and not less often than every two years) shall—

(A) review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command; and

(B) recommend to the President, through the Secretary of Defense, any changes to such missions, responsibilities, and force structures as may be necessary.

(2) Except during time of hostilities or imminent threat of hostilities, the President shall notify Congress not more than 60 days after—

(A) establishing a new combatant command; or

(B) significantly revising the missions, responsibilities, or force structure of an existing combatant command.

(c) DEFINITIONS.—In this chapter:

(1) The term ''unified combatant command'' means a military command which has broad, continuing missions and which is composed of forces from two or more military departments.

(2) The term ''specified combatant command'' means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

(3) The term ''combatant command'' means a unified combatant command or a specified combatant command.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1012.)

INITIAL REVIEW OF COMBATANT COMMANDS

Section 212 of Pub. L. 99–433 set out 10 areas to be covered in first review of missions, responsibilities, and force structure of unified combatant commands under subsec. (b) of this section, and directed that first report to President be made not later than Oct. 1, 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 167, 1051 of this title.

§ 162. Combatant commands: assigned forces; chain of command

(a) ASSIGNMENT OF FORCES.—(1) Except as provided in paragraph (2), the Secretaries of the military departments shall assign all forces under their jurisdiction to unified and specified combatant commands or to the United States element of the North American Air Defense Command to perform missions assigned to those commands. Such assignments shall be made as directed by the Secretary of Defense, including direction as to the command to which forces are to be assigned. The Secretary of Defense shall ensure that such assignments are consistent with the force structure prescribed by the President for each combatant command.

(2) Except as otherwise directed by the Secretary of Defense, forces to be assigned by the Secretaries of the military departments to the combatant commands or to the United States element of the North American Air Defense Command under paragraph (1) do not include forces assigned to carry out functions of the Secretary of a military department listed in sections 3013(b), 5013(b), and 8013(b) of this title or forces assigned to multinational peacekeeping organizations.

(3) A force assigned to a combatant command or to the United States element of the North American Air Defense Command under this section may be transferred from the command to which it is assigned only—

(A) by authority of the Secretary of Defense; and

(B) under procedures prescribed by the Secretary and approved by the President.

(4) Except as otherwise directed by the Secretary of Defense, all forces operating within the geographic area assigned to a unified combatant command shall be assigned to, and under the command of, the commander of that command. The preceding sentence applies to forces assigned to a specified combatant command only as prescribed by the Secretary of Defense.

(b) CHAIN OF COMMAND.—Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs—

(1) from the President to the Secretary of Defense; and

(2) from the Secretary of Defense to the commander of the combatant command.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1012; amended Pub. L. 100–180, div. A, title XIII, §1313, Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title VII, §711, Sept. 29, 1988, 102 Stat. 1997.)

AMENDMENTS

1988—Subsec. (a)(1) to (3). Pub. L. 100–456 inserted ''or to the United States element of the North American Air Defense Command''.

1987—Subsec. (a)(2). Pub. L. 100–180 inserted before period at end ''or forces assigned to multinational peacekeeping organizations''.

IMPLEMENTATION OF ASSIGNMENT OF FORCES TO COMBATANT COMMANDS

Section 214(a) of Pub. L. 99–433 provided that section 162(a) of this title shall be implemented not later than 90 days after Oct. 1, 1986.

CROSS REFERENCES

Air Force Chief of Staff, supervision over members and organizations of Air Force, see section 8033 of this title.

Army Chief of Staff, supervision over members and organizations of Army, see section 3033 of this title.

Chief of Naval Operations, supervision over members and organizations, of Navy and Marine Corps, see section 5033 of this title.

Commandant of Marine Corps, supervision over members and organizations of Marine Corps and Navy, see section 5043 of this title.

§163. Role of Chairman of Joint Chiefs of Staff

(a) COMMUNICATIONS THROUGH CHAIRMAN OF JCS; ASSIGNMENT OF DUTIES.—Subject to the limitations in section 152(c) of this title, the President may—

(1) direct that communications between the President or the Secretary of Defense and the commanders of the unified and specified combatant commands be transmitted through the Chairman of the Joint Chiefs of Staff; and

(2) assign duties to the Chairman to assist the President and the Secretary of Defense in performing their command function.

(b) OVERSIGHT BY CHAIRMAN OF JOINT CHIEFS OF STAFF.—(1) The Secretary of Defense may assign to the Chairman of the Joint Chiefs of Staff responsibility for overseeing the activities of the combatant commands. Such assignment by the Secretary to the Chairman does not confer any command authority on the Chairman and does not alter the responsibility of the commanders of the combatant commands prescribed in section 164(b)(2) of this title.

(2) Subject to the authority, direction, and control of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff serves as the spokesman for the commanders of the combatant commands, especially on the operational requirements of their commands. In performing such function, the Chairman shall—

(A) confer with and obtain information from the commanders of the combatant commands with respect to the requirements of their commands;

(B) evaluate and integrate such information;

(C) advise and make recommendations to the Secretary of Defense with respect to the requirements of the combatant commands, individually and collectively; and

(D) communicate, as appropriate, the requirements of the combatant commands to other elements of the Department of Defense.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1013.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 153 of this title.

§164. Commanders of combatant commands: assignment; powers and duties

(a) ASSIGNMENT AS COMBATANT COMMANDER.—(1) The President may assign an officer to serve as the commander of a unified or specified combatant command only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general or flag officer.

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

(b) RESPONSIBILITIES OF COMBATANT COMMANDERS.—(1) The commander of a combatant command is responsible to the President and to the Secretary of Defense for the performance of missions assigned to that command by the President or by the Secretary with the approval of the President.

(2) Subject to the direction of the President, the commander of a combatant command—

(A) performs his duties under the authority, direction, and control of the Secretary of Defense; and

(B) is directly responsible to the Secretary for the preparedness of the command to carry out missions assigned to the command.

(c) COMMAND AUTHORITY OF COMBATANT COMMANDERS.—(1) Unless otherwise directed by the President or the Secretary of Defense, the authority, direction, and control of the commander of a combatant command with respect to the commands and forces assigned to that command include the command functions of—

(A) giving authoritative direction to subordinate commands and forces necessary to carry out missions assigned to the command,

including authoritative direction over all aspects of military operations, joint training, and logistics;

(B) prescribing the chain of command to the commands and forces within the command;

(C) organizing commands and forces within that command as he considers necessary to carry out missions assigned to the command;

(D) employing forces within that command as he considers necessary to carry out missions assigned to the command;

(E) assigning command functions to subordinate commanders;

(F) coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out missions assigned to the command; and

(G) exercising the authority with respect to selecting subordinate commanders, selecting combatant command staff, suspending subordinates, and convening courts-martial, as provided in subsections (e), (f), and (g) of this section and section 822(a) of this title, respectively.

(2)(A) The Secretary of Defense shall ensure that a commander of a combatant command has sufficient authority, direction, and control over the commands and forces assigned to the command to exercise effective command over those commands and forces. In carrying out this subparagraph, the Secretary shall consult with the Chairman of the Joint Chiefs of Staff.

(B) The Secretary shall periodically review and, after consultation with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commander of the combatant command, assign authority to the commander of the combatant command for those aspects of administration and support that the Secretary considers necessary to carry out missions assigned to the command.

(3) If a commander of a combatant command at any time considers his authority, direction, or control with respect to any of the commands or forces assigned to the command to be insufficient to command effectively, the commander shall promptly inform the Secretary of Defense.

(d) AUTHORITY OVER SUBORDINATE COMMANDERS.—Unless otherwise directed by the President or the Secretary of Defense—

(1) commanders of commands and forces assigned to a combatant command are under the authority, direction, and control of, and are responsible to, the commander of the combatant command on all matters for which the commander of the combatant command has been assigned authority under subsection (c);

(2) the commander of a command or force referred to in clause (1) shall communicate with other elements of the Department of Defense on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command;

(3) other elements of the Department of Defense shall communicate with the commander of a command or force referred to in clause (1) on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command; and

(4) if directed by the commander of the combatant command, the commander of a command or force referred to in clause (1) shall advise the commander of the combatant command of all communications to and from other elements of the Department of Defense on any matter for which the commander of the combatant command has not been assigned authority under subsection (c).

(e) SELECTION OF SUBORDINATE COMMANDERS.—(1) An officer may be assigned to a position as the commander of a command directly subordinate to the commander of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of the combatant command; and

(B) in accordance with procedures established by the Secretary of Defense.

(2) The Secretary of Defense may waive the requirement under paragraph (1) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for assignment) of a particular officer if the Secretary of Defense determines that such action is in the national interest.

(3) The commander of a combatant command shall—

(A) evaluate the duty performance of each commander of a command directly subordinate to the commander of such combatant command; and

(B) submit the evaluation to the Secretary of the military department concerned and the Chairman of the Joint Chiefs of Staff.

(f) COMBATANT COMMAND STAFF.—(1) Each unified and specified combatant command shall have a staff to assist the commander of the command in carrying out his responsibilities. Positions of responsibility on the combatant command staff shall be filled by officers from each of the armed forces having significant forces assigned to the command.

(2) An officer may be assigned to a position on the staff of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of such command; and

(B) in accordance with procedures established by the Secretary of Defense.

(3) The Secretary of Defense may waive the requirement under paragraph (2) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for assignment) of a particular officer to serve on the staff of the combatant command if the Secretary of Defense determines that such action is in the national interest.

(g) AUTHORITY TO SUSPEND SUBORDINATES.—In accordance with procedures established by the Secretary of Defense, the commander of a combatant command may suspend from duty and recommend the reassignment of any officer assigned to such combatant command.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1013; amended Pub. L. 100–456, div. A, title V, § 519(a)(2), Sept. 29, 1988, 102 Stat. 1972.)

AMENDMENTS

1988—Subsec. (a)(1)(B). Pub. L. 100–456 substituted ''completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''served in at least one joint duty assignment (as defined under section 668(b) of this title)''.

EFFECTIVE DATE

Section 214(c) of Pub. L. 99–433 provided that: ''Subsections (e), (f), and (g) of section 164 of title 10, United States Code (as added by section 211 of this Act), shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986], or on such earlier date as may be prescribed by the Secretary of Defense.''

WAIVER OF QUALIFICATIONS FOR ASSIGNMENT AS COMBATANT COMMANDER

Section 214(b) of Pub. L. 99–433 authorized President, until Oct. 1, 1990, to waive, on a case-by-case basis, certain requirements provided for in subsec. (a) of this section relating to assignment of commanders of combatant commands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 163, 165, 167, 664 of this title.

§ 165. Combatant commands: administration and support

(a) IN GENERAL.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide for the administration and support of forces assigned to each combatant command.

(b) RESPONSIBILITY OF SECRETARIES OF MILITARY DEPARTMENTS.—Subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title, the Secretary of a military department is responsible for the administration and support of forces assigned by him to a combatant command.

(c) ASSIGNMENT OF RESPONSIBILITY TO OTHER COMPONENTS OF DOD.—After consultation with the Secretaries of the military departments, the Secretary of Defense may assign the responsibility (or any part of the responsibility) for the administration and support of forces assigned to the combatant commands to other components of the Department of Defense (including Defense Agencies and combatant commands). A component assigned such a responsibility shall discharge that responsibility subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1016.)

§ 166. Combatant commands: budget proposals

(a) COMBATANT COMMAND BUDGETS.—The Secretary of Defense shall include in the annual budget of the Department of Defense submitted to Congress a separate budget proposal for such activities of each of the unified and specified combatant commands as may be determined under subsection (b).

(b) CONTENT OF PROPOSALS.—A budget proposal under subsection (a) for funding of activities of a combatant command shall include funding proposals for such activities of the combatant command as the Secretary (after consultation with the Chairman of the Joint Chiefs of Staff) determines to be appropriate for inclusion. Activities of a combatant command for which funding may be requested in such a proposal include the following:

(1) Joint exercises.
(2) Force training.
(3) Contingencies.
(4) Selected operations.

(c) SOF TRAINING WITH FOREIGN FORCES.—A funding proposal for force training under subsection (b)(2) may include amounts for training expense payments authorized in section 2011 of this title.

(Added Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1016; amended Pub. L. 102–190, div. A, title X, § 1052(b), Dec. 5, 1991, 105 Stat. 1471.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–190 added subsec. (c).

EFFECTIVE DATE

Section 214(d) of Pub. L. 99–433 provided that: ''Section 166 of title 10, United States Code (as added by section 211 of this Act), shall take effect with budget proposals for fiscal year 1989.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 167 of this title.

§ 166a. Combatant commands: funding through the Chairman of Joint Chiefs of Staff

(a) CINC INITIATIVE FUND.—From funds made available in any fiscal year for the budget account in the Department of Defense known as the ''CINC Initiative Fund'', the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for any of the activities named in subsection (b).

(b) AUTHORIZED ACTIVITIES.—Activities for which funds may be provided under subsection (a) are the following:

(1) Force training.
(2) Contingencies.
(3) Selected operations.
(4) Command and control.
(5) Joint exercises (including activities of participating foreign countries).
(6) Humanitarian and civil assistance.
(7) Military education and training to military and related civilian personnel of foreign

countries (including transportation, translation, and administrative expenses).

(8) Personnel expenses of defense personnel for bilateral or regional cooperation programs.

(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund, should give priority consideration to—

(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided by the Chairman of the Joint Chiefs of Staff during any fiscal year out of the CINC Initiative Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) LIMITATIONS.—(1) Of funds made available under this section for any fiscal year—

(A) not more than $7,000,000 may be used to purchase items with a unit cost in excess of $15,000;

(B) not more than $1,000,000 may be used to pay for any expenses of foreign countries participating in joint exercises as authorized by subsection (b)(5); and

(C) not more than $2,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).

(2) Funds may not be provided under this section for any activity that has been denied authorization by Congress.

(f) INCLUSION OF NORAD.—For purposes of this section, the Commander, United States Element, North American Aerospace Defense Command shall be considered to be a commander of a combatant command.

(Added Pub. L. 102–190, div. A, title IX, § 902(a), Dec. 5, 1991, 105 Stat. 1450; amended Pub. L. 102–396, title IX, § 9128, Oct. 6, 1992, 106 Stat. 1935; Pub. L. 102–484, div. A, title IX, § 934, Oct. 23, 1992, 106 Stat. 2477; Pub. L. 103–35, title II, § 201(a), May 31, 1993, 107 Stat. 97.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–35, § 201(a)(1), substituted ''the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose'' for ''the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or to the Director of the Joint Staff with respect to an area or areas not within the area of responsibility of a commander of a combatant command.''

Subsec. (b)(7). Pub. L. 103–35, § 201(a)(2), struck out second of two identical parenthetical phrases at end of par. (7) which read as follows: ''(including transportation, translation, and administrative expenses)''.

1992—Subsec. (a). Pub. L. 102–484, § 934(a), which directed substitution of ''funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose.'' for ''funds, upon request,'' and all that follows through the period, could not be executed because the words did not appear subsequent to the amendment by Pub. L. 102–396, § 9128(a). See below.

Pub. L. 102–396, § 9128(a), substituted ''funds to the commander of a combatant command, upon the request of the commander, or to the Director of the Joint Staff with respect to an area or areas not within the area of responsibility of a commander of a combatant command.'' for ''funds, upon request, to the commanders of the combatant commands.''

Subsec. (b)(7). Pub. L. 102–396, § 9128(b), and Pub. L. 102–484, § 934(b), both inserted before period at end ''(including transportation, translation, and administrative expenses)''.

Subsec. (c). Pub. L. 102–484, § 934(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund, should give priority consideration to requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds (c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund or the provision of funds to the Director of the Joint Staff under subsection (a), should give priority consideration to—

''(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

''(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States..[sic]''

Pub. L. 102–396, § 9128(c), inserted before period at end ''(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund or the provision of funds to the Director of the Joint Staff under subsection (a), should give priority consideration to—

''(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

''(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.''

Subsec. (e)(1)(C). Pub. L. 102–484, § 934(d), amended subpar. (C) generally. Prior to amendment, subsec. (C) read as follows: ''not more than $5,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).''

Pub. L. 102–396, § 9128(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''not more than $500,000 may be used to provide military education and training to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).''

§167. Unified combatant command for special operations forces

(a) ESTABLISHMENT.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for special operations forces (hereinafter in this section referred to as the ''special operations command''). The principal function of the command is to prepare special operations forces to carry out assigned missions.

(b) ASSIGNMENT OF FORCES.—Unless otherwise directed by the Secretary of Defense, all active and reserve special operations forces of the armed forces stationed in the United States shall be assigned to the special operations command.

(c) GRADE OF COMMANDER.—The commander of the special operations command shall hold the grade of general or, in the case of an officer of the Navy, admiral while serving in that position, without vacating his permanent grade. The commander of such command shall be appointed to that grade by the President, by and with the advice and consent of the Senate, for service in that position.

(d) COMMAND OF ACTIVITY OR MISSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, a special operations activity or mission shall be conducted under the command of the commander of the unified combatant command in whose geographic area the activity or mission is to be conducted.

(2) The commander of the special operations command shall exercise command of a selected special operations mission if directed to do so by the President or the Secretary of Defense.

(e) AUTHORITY OF COMBATANT COMMANDER.—(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities.

(2) The commander of such command shall be responsible for, and shall have the authority to conduct, the following functions relating to special operations activities (whether or not relating to the special operations command):

(A) Developing strategy, doctrine, and tactics.

(B) Preparing and submitting to the Secretary of Defense program recommendations and budget proposals for special operations forces and for other forces assigned to the special operations command.

(C) Exercising authority, direction, and control over the expenditure of funds—

(i) for forces assigned to the special operations command; and

(ii) for special operations forces assigned to unified combatant commands other than the special operations command, with respect to all matters covered by paragraph (4) and, with respect to a matter not covered by paragraph (4), to the extent directed by the Secretary of Defense.

(D) Training assigned forces.

(E) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

(F) Validating requirements.

(G) Establishing priorities for requirements.

(H) Ensuring the interoperability of equipment and forces.

(I) Formulating and submitting requirements for intelligence support.

(J) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

(3) The commander of the special operations command shall be responsible for—

(A) ensuring the combat readiness of forces assigned to the special operations command; and

(B) monitoring the preparedness to carry out assigned missions of special operations forces assigned to unified combatant commands other than the special operations command.

(4)(A) The commander of the special operations command shall be responsible for, and shall have the authority to conduct, the following:

(i) Development and acquisition of special operations-peculiar equipment.

(ii) Acquisition of special operations-peculiar material, supplies, and services.

(B) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under subparagraph (A), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title.

(C) The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.

(f) BUDGET.—In addition to the activities of a combatant command for which funding may be requested under section 166(b) of this title, the budget proposal of the special operations command shall include requests for funding for—

(1) development and acquisition of special operations-peculiar equipment; and

(2) acquisition of other material, supplies, or services that are peculiar to special operations activities.

(g) INTELLIGENCE AND SPECIAL ACTIVITIES.—This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the activities of the special operations command. Such regulations shall include authorization for the commander of such command to provide for operational security of special operations forces and activities.

(i) IDENTIFICATION OF SPECIAL OPERATIONS FORCES.—(1) Subject to paragraph (2), for the purposes of this section special operations forces are those forces of the armed forces that—

(A) are identified as core forces or as augmenting forces in the Joint Chiefs of Staff Joint Strategic Capabilities Plan, Annex E, dated December 17, 1985;

(B) are described in the Terms of Reference and Conceptual Operations Plan for the Joint Special Operations Command, as in effect on April 1, 1986; or

(C) are designated as special operations forces by the Secretary of Defense.

(2) The Secretary of Defense, after consulting with the Chairman of the Joint Chiefs of Staff and the commander of the special operations command, may direct that any force included within the description in paragraph (1)(A) or (1)(B) shall not be considered as a special operations force for the purposes of this section.

(j) SPECIAL OPERATIONS ACTIVITIES.—For purposes of this section, special operations activities include each of the following insofar as it relates to special operations:

(1) Direct action.
(2) Strategic reconnaissance.
(3) Unconventional warfare.
(4) Foreign internal defense.
(5) Civil affairs.
(6) Psychological operations.
(7) Counterterrorism.
(8) Humanitarian assistance.
(9) Theater search and rescue.
(10) Such other activities as may be specified by the President or the Secretary of Defense.

(k) BUDGET SUPPORT FOR RESERVE ELEMENTS.—(1) Before the budget proposal for the special operations command for any fiscal year is submitted to the Secretary of Defense, the commander of the command shall consult with the Secretaries of the military departments concerning funding for reserve component special operations units. If the Secretary of a military department does not concur in the recommended level of funding with respect to any such unit that is under the jurisdiction of the Secretary, the commander shall include with the budget proposal submitted to the Secretary of Defense the views of the Secretary of the military department concerning such funding.

(2) Before the budget proposal for a military department for any fiscal year is submitted to the Secretary of Defense, the Secretary of that military department shall consult with the commander of the special operations command concerning funding for special operations forces in the military personnel budget for a reserve component in that military department. If the commander of that command does not concur in the recommended level of funding with respect to reserve component special operations units, the Secretary shall include with the budget proposal submitted to the Secretary of Defense the views of the commander of that command.

(Added Pub. L. 99–500, § 101(c) [title IX, § 9115(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–122, and Pub. L. 99–591, § 101(c) [title IX, § 9115(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–122; Pub. L. 99–661, div. A, title XIII, § 1311(b)(1), Nov. 14, 1986, 100 Stat. 3983; amended Pub. L. 100–180, div. A, title XII, § 1211(d), Dec. 4, 1987, 101 Stat. 1156; Pub. L. 100–456, div. A, title VII, § 712, Sept. 29, 1988, 102 Stat. 1997; Pub. L. 102–88, title VI, § 602(c)(3), Aug. 14, 1991, 105 Stat. 444; Pub. L. 103–337, div. A, title IX, § 925, Oct. 5, 1994, 108 Stat. 2832.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (g), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–661 and Pub. L. 99–500 added identical sections.

AMENDMENTS

1994—Subsec. (k). Pub. L. 103–337 added subsec. (k).

1991—Subsec. (g). Pub. L. 102–88 substituted ''would require a notice'' for ''would require—

''(1) a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or

''(2) a notice'' and ''title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)'' for ''section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)''.

1988—Subsec. (e). Pub. L. 100–456 revised and restated subsec. (e). Prior to amendment, subsec. (e) read as follows:

''(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities, including the following functions:

''(A) Developing strategy, doctrine, and tactics.

''(B) Training assigned forces.

''(C) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

''(D) Validating requirements.

''(E) Establishing priorities for requirements.

''(F) Ensuring combat readiness.

''(G) Developing and acquiring special operations-peculiar equipment and acquiring special operations-peculiar material, supplies, and services.

''(H) Ensuring the interoperability of equipment and forces.

''(I) Formulating and submitting requirements for intelligence support.

''(J) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

''(2) The commander of such command shall be responsible for monitoring the preparedness of special operations forces assigned to other unified combatant commands to carry out assigned missions.

''(3) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under paragraph (1)(G), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title. The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.''

1987—Subsec. (e)(3). Pub. L. 100–180 added par. (3).

EFFECTIVE DATE

Section 101(c) [§ 9115(i)] of Pub. L. 99–500 and Pub. L. 99–591, and section 1311(i) of Pub. L. 99–661, provided that: ''Section 167 of title 10, United States Code (as added by subsection (b)), shall be implemented not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].''

GRADE OF CERTAIN COMMANDERS OF SPECIAL OPERATIONS FORCES

Pub. L. 102–484, div. A, title IX, § 936(a), (b), Oct. 23, 1992, 106 Stat. 2479, provided that:

''(a) GRADE FOR CERTAIN REGIONAL SOF COMMANDERS.—During the period beginning on February 1, 1993, and ending on February 1, 1995, the provisions of section 1311(e) of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 167 note) shall apply as if the Secretary of Defense had designated the United States Southern Command and the United States Central Command for the purposes of that section.

''(b) REPORT.—Not later than March 1, 1994, the Secretary of Defense shall submit to Congress a report setting forth the Secretary's recommendations for the grade structure for the special operations forces component commander for each unified command, particularly as to whether each such commander should be of general or flag officer grade.''

RESOURCES FOR CINCSOF

Section 1211(b) of Pub. L. 100–180 provided that: ''The Secretary of Defense shall provide sufficient resources for the commander of the unified combatant command for special operations forces established pursuant to section 167 of title 10, United States Code, to carry out his duties and responsibilities, including particularly his duties and responsibilities relating to the following functions:

''(1) Developing and acquiring special operations-peculiar equipment and acquiring special operations-peculiar material, supplies, and services.

''(2) Providing advice and assistance to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict in the Assistant Secretary's overall supervision of the preparation and justification of the program recommendations and budget proposals for special operations forces.

''(3) Managing assigned resources from the major force program category for special operations forces of the Five-Year Defense Plan of the Department of Defense (as required to be created pursuant to subsection (e)).''

RESOURCES AND PROGRAMMING

Section 1211(e) of Pub. L. 100–180 provided that:

''(1) The major force program category for special operations forces of the Five-Year Defense Plan of the Department of Defense, to be created pursuant to section 1311(c) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661) [set out below], shall be created not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987].

''(2) On the date that such major force program category is created, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(A) a certification that all program recommendations and budget proposals for special operations forces are included in such category; and

''(B) a report explaining the program recommendations and budget proposals that have been included in such category.''

MAJOR FORCE PROGRAM CATEGORY; PROGRAM AND BUDGET EXECUTION; GRADE FOR COMMANDERS OF CERTAIN AREA SPECIAL OPERATIONS COMMANDS

Section 1311(c)–(e) of Pub. L. 99–661 provided that:

''(c) MAJOR FORCE PROGRAM CATEGORY.—The Secretary of Defense shall create for the special operations forces a major force program category for the Five-Year Defense Plan of the Department of Defense. The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, with the advice and assistance of the commander of the special operations command, shall provide overall supervision of the preparation and justification of program recommendations and budget proposals to be included in such major force program category.

''(d) PROGRAM AND BUDGET EXECUTION.—To the extent that there is authority to revise programs and budgets approved by Congress for special operations forces, such authority may be exercised only by the Secretary of Defense, after consulting with the commander of the special operations command.

''(e) GRADE FOR COMMANDERS OF CERTAIN AREA SPECIAL OPERATIONS COMMANDS.—The commander of the special operations command of the United States European Command, the United States Pacific Command, and any other unified combatant command that the Secretary of Defense may designate for the purposes of this section shall be of general or flag officer grade.''

[Identical provisions were contained in section 101(c) [§9115(c)–(e)] of Pub. L. 99–500 and Pub. L. 99–591, which was repealed by Pub. L. 102–484, div. A, title IX, §936(c), Oct. 23, 1992, 106 Stat. 2479.]

REPORT ON CAPABILITIES OF UNITED STATES TO CONDUCT SPECIAL OPERATIONS AND ENGAGE IN LOW INTENSITY CONFLICTS

Section 101(c) [§9115(h)(2)] of Pub. L. 99–500 and Pub. L. 99–591, and section 1311(h)(2) of Pub. L. 99–661, required President, not later than one year after Oct. 1, 1986, to transmit to Congress a report on capabilities of United States to conduct special operations and engage in low intensity conflicts, the report to include a description of deficiencies in such capabilities, actions being taken throughout executive branch to correct such deficiencies, the principal low intensity conflict threats to interests of United States, and the actions taken and to be taken to implement this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 2011, 2680 of this title.

§168. Military-to-military contacts and comparable activities

(a) PROGRAM AUTHORITY.—The Secretary of Defense may conduct military-to-military contacts and comparable activities that are designed to encourage a democratic orientation of defense establishments and military forces of other countries.

(b) ADMINISTRATION.—The Secretary may provide funds appropriated for carrying out subsection (a) to the following officials for use as provided in subsection (c):

(1) The commander of a combatant command, upon the request of the commander.

(2) An officer designated by the Chairman of the Joint Chiefs of Staff, with respect to an area or areas not under the area of responsibility of a commander of a combatant command.

(3) The head of any Department of Defense component.

(c) AUTHORIZED ACTIVITIES.—An official provided funds under subsection (b) may use those funds for the following activities and expenses:

(1) The activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities.

(2) The activities of military liaison teams.

(3) Exchanges of civilian or military personnel between the Department of Defense and defense ministries of foreign governments.

(4) Exchanges of military personnel between units of the armed forces and units of foreign armed forces.

(5) Seminars and conferences held primarily in a theater of operations.

(6) Distribution of publications primarily in a theater of operations.

(7) Personnel expenses for Department of Defense civilian and military personnel to the

extent that those expenses relate to participation in an activity described in paragraph (3), (4), (5), or (6).

(8) Reimbursement of military personnel appropriations accounts for the pay and allowances paid to reserve component personnel for service while engaged in any activity referred to in another paragraph of this subsection.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided during any fiscal year to an official under subsection (b) for an activity or expense referred to in subsection (c) shall be in addition to amounts otherwise available for those activities and expenses for that fiscal year.

(e) LIMITATIONS.—(1) Funds may not be provided under this section for a fiscal year for any activity for which—

(A) funding was proposed in the budget submitted to Congress for that fiscal year pursuant to section 1105(a) of title 31; and

(B) Congress did not authorize appropriations.

(2) An activity may not be conducted under this section with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.

(3) Funds may not be provided under this section for a fiscal year for any country that is not eligible in that fiscal year for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(4) Except for those activities specifically authorized under subsection (c), funds may not be used under this section for the provision of defense articles or defense services to any country or for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(f) MILITARY-TO-MILITARY CONTACTS DEFINED.—In this section, the term ''military-to-military contacts'' means contacts between members of the armed forces and members of foreign armed forces through activities described in subsection (c).

(Added Pub. L. 103–337, div. A, title XIII, § 1316(a)(1), Oct. 5, 1994, 108 Stat. 2898.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (e)(3), (4), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 5 of part II of the Act is classified generally to part V (§ 2347 et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

Sec.
171. Armed Forces Policy Council.
172. Ammunition storage board.
173. Advisory personnel.
174. Advisory personnel: research and development.
175. Reserve Forces Policy Board.
176. Armed Forces Institute of Pathology.
177. American Registry of Pathology.
178. The Henry M. Jackson Foundation for the Advancement of Military Medicine.
179. Nuclear Weapons Council.
180. Service academy athletic programs: review board.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title V, § 513(b), Dec. 5, 1991, 105 Stat. 1361, added item 180.

1986—Pub. L. 99–661, div. C, title I, § 3137(a)(2), Nov. 14, 1986, 100 Stat. 4066, added item 179.

1983—Pub. L. 98–132, § 2(a)(2), Oct. 17, 1983, 97 Stat. 849, inserted ''The Henry M. Jackson'' before ''Foundation'' in item 178.

Pub. L. 98–36, § 2(b), May 27, 1983, 97 Stat. 201, added item 178.

1976—Pub. L. 94–361, title VIII, § 811(c), July 14, 1976, 90 Stat. 936, added items 176 and 177.

§ 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

(1) the Secretary of Defense, as Chairman, with the power of decision;

(2) the Deputy Secretary of Defense;

(3) the Under Secretary of Defense for Acquisition and Technology;

(4) the Secretary of the Army;

(5) the Secretary of the Navy;

(6) the Secretary of the Air Force;

(7) the Under Secretary of Defense for Policy;

(8) the Deputy Under Secretary of Defense for Acquisition and Technology;

(9) the Chairman of the Joint Chiefs of Staff;

(10) the Chief of Staff of the Army;

(11) the Chief of Naval Operations;

(12) the Chief of Staff of the Air Force; and

(13) the Commandant of the Marine Corps.

(b) The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Aug. 6, 1958, Pub. L. 85–599, § 9(c), 72 Stat. 521; Oct. 27, 1972, Pub. L. 92–596, § 5, 86 Stat. 1318; Oct. 21, 1977, Pub. L. 95–140, § 3(b), 91 Stat. 1173; Sept. 24, 1983, Pub. L. 98–94, title XII, § 1213, 97 Stat. 687; Oct. 18, 1986, Pub. L. 99–500, § 101(c) [title X, § 903(e)], 100 Stat. 1783–82, 1783–133, and Oct. 30, 1986, Pub. L. 99–591, § 101(c) [title X, § 903(e)], 100 Stat. 3341–82, 3341–133; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(e), 100 Stat. 3912, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, § 3(5), 101 Stat. 273; Nov. 30, 1993, Pub. L. 103–160, div. A, title IX, § 904(d)(1), (3), 107 Stat. 1728.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
171(a)	5:171e (less last sentence).	July 26, 1947, ch. 343, § 210; restated Aug. 10, 1949, ch. 412, § 7(a), 63 Stat. 581.
171(b).	5:171e (last sentence).	

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103–160, § 904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

Subsec. (a)(8). Pub. L. 103–160, § 904(d)(3), substituted ''Deputy Under Secretary of Defense for Acquisition and Technology'' for ''Deputy Under Secretary of Defense for Acquisition''.

1986—Subsec. (a)(3) to (13) Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically, redesignating pars. (3) to (11) as (4), (5), (6), (7), (9), (10), (11), (12), and (13), respectively, adding new pars. (3) and (8), and substituting ''the Under Secretary of Defense for Acquisition'' for ''the Under Secretaries of Defense'' in par. (7).

1983—Subsec. (a)(11). Pub. L. 98–94 added par. (11).

1977—Subsec. (a)(2). Pub. L. 95–140, §3(b)(1), substituted ''the Deputy'' for ''a Deputy''.

Subsec. (a)(6). Pub. L. 95–140, §3(b)(2), substituted ''the Under Secretaries of Defense;'' for ''the Director of Defense Research and Engineering;''.

1972—Subsec. (a)(2). Pub. L. 92–596 substituted ''a Deputy Secretary'' for ''the Deputy Secretary''.

1958—Subsec. (a)(6) to (10). Pub. L. 85–599 added par. (6) and redesignated former pars. (6) to (9) as (7) to (10), respectively.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–36, §1, May 27, 1983, 97 Stat. 200, provided: ''That this Act [enacting section 178 of this title and amending section 2113 of this title] may be cited as the 'Foundation for the Advancement of Military Medicine Act of 1983'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3033, 5033, 5043, 8033 of this title.

§172. Ammunition storage board

(a) The Secretaries of the military departments, acting through a joint board of officers selected by them, shall keep informed on stored supplies of ammunition and components thereof for use of the Army, Navy, Air Force, and Marine Corps, with particular regard to keeping those supplies properly dispersed and stored and to preventing hazardous conditions from arising to endanger life and property inside or outside of storage reservations.

(b) The board shall confer with and advise the Secretaries of the military departments in carrying out the recommendations in House Document No. 199 of the Seventieth Congress.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
172(a)	50:83 (less last sentence).	May 29, 1928, ch. 853 (last par. under ''Ordnance Establishment''), 45 Stat. 928.
172(b).	50:83 (last sentence).	

In subsection (a), the words ''informed on stored'' are substituted for the words ''advised of storage''. The words ''particular regard'' are substituted for the words ''special reference''. The words ''inside or outside of'' are substituted for the words ''within or without''. The word ''selected'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the words ''in carrying out'' are substituted for the words ''in the execution of''.

§173. Advisory personnel

(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.

(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary determines.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Nov. 2, 1966, Pub. L. 89–718, §2, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
173(a)	5:171j(a) (1st sentence, as applicable to Secretary of Defense).	July 26, 1947, ch. 343, §303 (as applicable to Secretary of Defense);
173(b).	5:171j(a) (less 1st sentence, as applicable to Secretary of Defense).	Aug. 10, 1949, ch. 412, §10(c) (as applicable to Secretary of Defense);
173(c).	5:171j(b) (as applicable to Secretary of Defense).	Sept. 3, 1954, ch. 1263, §8 (as applicable to Secretary of Defense), 68 Stat. 1228.

In subsection (a), the words ''consistent with other provisions of sections 171–171n, 172–172j, 181–1, 181–2, 411a, 411b, and 626–626d of this title and sections 401–405 of Title 50'' are omitted as surplusage. The word ''establish'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''Secretary'' is substituted for the words ''appointing authority''.

In subsection (c), the words ''as a part-time adviser'' are substituted for the words ''in any other part-time capacity for a department or agency'' to conform to subsections (a) and (b).

AMENDMENTS

1966—Subsec. (c). Pub. L. 89–718 repealed subsec. (c) which provided that sections 281, 283, and 284 of title 18 did not apply to a person because of his service on a committee or as a part-time advisor under subsec. (a) of this section unless the unlawful act related to a matter directly involving a department or agency which he was advising or to a matter in which that department or agency was directly interested.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§174. Advisory personnel: research and development

(a) The Secretary of each military department may establish such advisory committees and panels as are necessary for the research and development activities of his department and may employ such part-time advisers as he considers necessary to carry out those activities.

(b) A person who serves as a member of such a committee or panel may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary concerned determines.

(c) The Secretary concerned may delegate any authority under this section to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department; or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
174(a)	5:235b (1st sentence). 5:475g (1st sentence). 5:628b (1st sentence).	July 16, 1952, ch. 882, §§1, 7 (as applicable to §1), 66 Stat. 725, 726.
174(b)	5:235b (less 1st sentence). 5:475g (less 1st sentence). 5:628b (less 1st sentence).	
174(c)	5:235h (as applicable to 5:235b). 5:475m (as applicable to 5:475g). 5:628h (as applicable to 5:628b).	

In subsection (a), the words ''the conduct of'' are omitted as surplusage.

In subsection (b), the words ''or panel'' are inserted for clarity. The words ''Secretary concerned'' are substituted for the words ''appointing authority''.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 175. Reserve Forces Policy Board

There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The functions, membership, and organization of that board are set forth in section 10301 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Dec. 1, 1967, Pub. L. 90–168, §2(3), (4), 81 Stat. 521; Sept. 24, 1983, Pub. L. 98–94, title XII, §1212(b), 97 Stat. 687; Oct. 19, 1984, Pub. L. 98–525, title XIII, §1306, title XIV, §1405(4), 98 Stat. 2613, 2622; Oct. 30, 1984, Pub. L. 98–557, §21, 98 Stat. 2870; Oct. 1, 1986, Pub. L. 99–433, title V, §531(a)(1), 100 Stat. 1063; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, §921, title XVI, §1661(b)(3), 108 Stat. 2829, 2981.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
175(a)	50:1008(a).	July 9, 1952, ch. 608, §257 (less (e)), 66 Stat. 497.
175(b)	50:1008(b).	
175(c)	50:1008(c).	
175(d)	50:1008(d) (less proviso).	
175(e)	50:1008(d) (proviso).	

In subsection (a), the word ''are'' is substituted for the words ''is established'', to make clear the continuing authority of the organization established by the source statute. Clauses (3), (4), and (5) are substituted for 50:1008(a)(iii) for clarity. In clauses (6), (7), (8), and (9), the word ''designated'' is substituted for the word ''appointed'', in 50:1008(iv), (v), (vi), and (vii), to make it clear that the positions described are not constitutional offices.

In subsection (b), the words ''Regular Coast Guard or Coast Guard Reserve'' are substituted for the words ''Regular or Reserve * * * Coast Guard''.

AMENDMENTS

1994—Pub. L. 103–337, §1661(b)(3), amended section generally, substituting single undesignated par. for former subsecs. (a) to (f) relating to establishment, composition, functions, and powers of Reserve Forces Policy Board.

Subsec. (a)(4). Pub. L. 103–337, §921(1), substituted ''and an officer of the Regular Marine Corps each'' for ''or Regular Marine Corps''.

Subsec. (a)(10). Pub. L. 103–337, §921(2)–(4), added par. (10).

1986—Subsec. (d). Pub. L. 99–433 substituted ''3021'' and ''8021'' for ''3033'' and ''8033'', respectively.

1984—Subsec. (b). Pub. L. 98–557 substituted ''Regular or Reserve, to serve as voting members'' for ''regular or reserve, to serve as a voting member''.

Pub. L. 98–525, §1306, substituted ''two officers of the Coast Guard, regular or reserve'' for ''an officer of the Regular Coast Guard or the Coast Guard Reserve''.

Subsec. (c). Pub. L. 98–525, §1405(4), inserted a comma following ''Reserve Affairs''.

1983—Subsec. (c). Pub. L. 98–94 substituted ''Assistant Secretary of Defense for Reserve Affairs'' for ''Assistant Secretary of Defense for Manpower and Reserve Affairs''.

1967—Subsec. (a)(2). Pub. L. 90–168, §2(3), substituted ''the Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs'' for ''the Secretary, the Under Secretary, or an Assistant Secretary designated under section 264(b) of this title, of each of the military departments''.

Subsec. (b). Pub. L. 90–168, §2(4), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' as the Secretary empowered to designate officers to serve on the Board and substituted ''serve as a voting member'' for ''serve without vote as a member'' in the description of the officer's service on the Board.

Subsec. (c). Pub. L. 90–168, §2(4), substituted ''Assistant Secretary of Defense for Manpower and Reserve Affairs'' for ''Assistant Secretary of Defense designated under section 264(a) of this title''.

Subsec. (d). Pub. L. 90–168, §2(4), inserted references to sections 5251 and 5252 of this title.

Subsec. (e). Pub. L. 90–168, §2(4), substituted ''member of a committee or board prescribed under a section listed in subsection (d)'' for ''member of a committee under section 3033 or 8033 of this title''.

Subsec. (f). Pub. L. 90–168, §2(4), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1661(b)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98–94 set out as a note under section 138 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90–168, see section 7 of Pub. L. 90–168, set out as a note under section 138 of this title.

CROSS REFERENCES

Air Force Reserve Forces policy committee, see section 10305 of this title.

Army Reserve Forces policy committee, see section 10302 of this title.

Marine Corps Reserve Policy Board, see section 10304 of this title.

Naval Reserve Policy Board, see section 10303 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 101 of this title.

§176. Armed Forces Institute of Pathology

(a)(1) There is in the Department of Defense an Institute to be known as the Armed Forces Institute of Pathology (hereinafter in this section referred to as the ''Institute''), which has the responsibilities, functions, authority, and relationships set forth in this section. The Institute shall be a joint entity of the three military departments, subject to the authority, direction, and control of the Secretary of Defense.

(2) The Institute shall consist of a Board of Governors, a Director, two Deputy Directors, and a staff of such professional, technical, and clerical personnel as may be required.

(3) The Board of Governors shall consist of the Assistant Secretary of Defense for Health Affairs, who shall serve as chairman of the Board of Governors, the Assistant Secretary of Health and Human Services for Health, the Surgeons General of the Army, Navy, and Air Force, the Chief Medical Director of the Department of Veterans Affairs, and a former Director of the Institute, as designated by the Secretary of Defense, or the designee of any of the foregoing.

(4) The Director and the Deputy Directors shall be appointed by the Secretary of Defense.

(b)(1) In carrying out the provisions of this section, the Institute is authorized to—

(A) contract with the American Registry of Pathology (established under section 177 of this title) for cooperative enterprises in medical research, consultation, and education between the Institute and the civilian medical profession under such conditions as may be agreed upon between the Board of Governors and the American Registry of Pathology;

(B) make available at no cost to the American Registry of Pathology such space, facilities, equipment, and support services within the Institute as the Board of Governors deems necessary for the accomplishment of their mutual cooperative enterprises; and

(C) contract with the American Registry of Pathology for the services of such professional, technical, or clerical personnel as are necessary to fulfill their cooperative enterprises.

(2) No contract may be entered into under paragraph (1) which obligates the Institute to make outlays in advance of the enactment of budget authority for such outlays.

(c) The Director is authorized, with the approval of the Board of Governors, to enter into agreements with the American Registry of Pathology for the services at any time of not more than six distinguished pathologists or scientists of demonstrated ability and experience for the purpose of enhancing the activities of the Institute in education, consultation, and research. Such pathologists or scientists may be appointed by the Director to administrative positions within the components or subcomponents of the Institute and may be authorized by the Director to exercise any or all professional duties within the Institute, notwithstanding any other provision of law. The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.

(d) The Secretary of Defense shall promulgate such regulations as may be necessary to prescribe the organization, functions, and responsibilities of the Institute.

(Added Pub. L. 94–361, title VIII, §811(b), July 14, 1976, 90 Stat. 933; amended Pub. L. 96–513, title V, §511(6), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–160, div. A, title VII, §733, Nov. 30, 1993, 107 Stat. 1697.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–160 inserted at end ''The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.''

1989—Subsec. (a)(3). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a)(3). Pub. L. 96–513, §511(6)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b)(1)(A). Pub. L. 96–513, §511(6)(B), inserted ''of this title'' after ''177''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

NATIONAL MUSEUM OF HEALTH AND MEDICINE

Pub. L. 103–337, div. A, title X, §1067, Oct. 5, 1994, 108 Stat. 2851, provided that:

''(a) PURPOSE.—It is the purpose of this section—

''(1) to display and interpret the collections of the Armed Forces Institute of Pathology currently located at Walter Reed Medical Center;

''(2) to designate the public facility of the Armed Forces Institute of Pathology as the National Museum of Health and Medicine; and

''(3) to designate a site for the relocation of the public facility of the National Museum of Health and Medicine so that it may serve as a central resource of instruction about, and be involved in, the critical health issues which confront all American citizens.

''(b) DESIGNATION AND SITE OF FACILITY.—The public facility of the Armed Forces Institute of Pathology—

''(1) shall also be known as the National Museum of Health and Medicine; and

''(2) shall be located on or near the Mall on land owned by the Federal Government or the District of Columbia (or both) in the District of Columbia.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority or responsibilities of the National Capital Planning Commission or the Commission of Fine Arts.

''(d) DEFINITION.—As used in this section, the term 'the Mall' means—

''(1) the land designated as 'Union Square', United States Reservation 6A; and

''(2) the land designated as the 'Mall', United States Reservations 3, 4, 5, and 6.

''(e) SENSE OF THE CONGRESS.—

''(1) FINDINGS.—Congress makes the following findings:

''(A) The National Museum of Health and Medicine Foundation, Inc. (a private, nonprofit organization having for its primary purpose the relocation to the Mall and revitalization of the National Museum of Health and Medicine), the Armed Forces Institute of Pathology, and the Public Health Service have jointly supported planning to relocate the

Museum to a site on land that is located east of and adjacent to the Hubert H. Humphrey Building (100 Independence Avenue, Southwest, in the District of Columbia).

''(B) The National Museum of Health and Medicine Foundation, Inc., is deserving of the encouragement and support of the American people in its effort to relocate the National Museum of Health and Medicine to a site on land that is located east of and adjacent to the Hubert H. Humphrey Building, and in its effort to raise funds for a revitalized Museum to inspire increasing numbers of Americans to lead healthy lives through improved public understanding of health and the medical sciences.

''(2) LOCATION.—It is the sense of Congress that, subject to appropriate approvals by the National Capital Planning Commission and the Commission of Fine Arts, the National Museum of Health and Medicine should be relocated to a site on land that is located east of and adjacent to the Hubert H. Humphrey Building for the purpose of educating the American public concerning health and the medical sciences.''

CONGRESSIONAL FINDINGS AND DECLARATION

Section 811(a) of Pub. L. 94–361 provided that:

''(1) The Congress hereby finds and declares that—

''(A) the Armed Forces Institute of Pathology offers unique pathologic support to national and international medicine;

''(B) the Institute contains the Nation's most comprehensive collection of pathologic specimens for study and a staff of prestigious pathologists engaged in consultation, education, and research;

''(C) the activities of the Institute are of unique and vital importance in support of the health care of the Armed Forces of the United States;

''(D) the activities of the Institute are also of unique and vital importance in support of the civilian health care system of the United States;

''(E) the Institute provides an important focus for the exchange of information between civilian and military medicine, to the benefit of both; and

''(F) it is important to the health of the American people and of the members of the Armed Forces of the United States that the Institute continue its activities in serving both the military and civilian sectors in education, consultation, and research in the medical, dental, and veterinary sciences.

''(2) The Congress further finds and declares that beneficial cooperative efforts between private individuals, professional societies, and other entities on the one hand and the Armed Forces Institute of Pathology on the other can be carried out most effectively through the establishment of a private corporation.''

§ 177. American Registry of Pathology

(a)(1) There is authorized to be established a nonprofit corporation to be known as the American Registry of Pathology which shall not for any purpose be an agency or establishment of the United States Government. The American Registry of Pathology shall be subject to the provisions of this section and, to the extent not inconsistent with this section, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–501 et seq.).

(2) The American Registry of Pathology shall have a Board of Members (hereinafter in this section referred to as the ''Board'') consisting of not less than eleven individuals who are representatives of those professional societies and organizations which sponsor individual registries of pathology at the Armed Forces Institute of Pathology, of whom one shall be elected annually by the Board to serve as chairman. Each such sponsor shall appoint one member to the Board for a term of four years.

(3) The American Registry of Pathology shall have a Director, who shall be appointed by the Board with the concurrence of the Director of the Armed Forces Institute of Pathology, and such other officers as may be named and appointed by the Board. Such officers shall be compensated at rates fixed by the Board and shall serve at the pleasure of the Board.

(4) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish under the District of Columbia Nonprofit Corporation Act the corporation authorized by paragraph (1).

(5) The term of office of each member of the Board shall be four years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment and to the maximum extent practicable, one fourth at the end of one year, one fourth at the end of two years, one fourth at the end of three years, and one fourth at the end of four years, and (C) a member whose term has expired may serve until his successor has qualified. No member shall be eligible to serve more than two consecutive terms of four years each.

(6) Any vacancy in the Board shall not affect its powers, but such vacancy shall be filled in the manner in which the original appointment was made.

(b) In order to carry out the purposes of this section, the American Registry of Pathology is authorized to—

(1) enter into contracts with the Armed Forces Institute of Pathology for the provision of such services and personnel as may be necessary to carry out their cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of fascicles of tumor pathology, atlases, and other material;

(3) accept gifts and grants from and enter into contracts with individuals, private foundations, professional societies, institutions, and governmental agencies;

(4) enter into agreements with professional societies for the establishment and maintenance of Registries of Pathology; and

(5) serve as a focus for the interchange between military and civilian pathology and encourage the participation of medical, dental, and veterinary sciences in pathology for the mutual benefit of military and civilian medicine.

(c) In the performance of the functions set forth in subsection (b), the American Registry of Pathology is authorized to—

(1) enter into such other contracts, leases, cooperative agreements, or other transactions as the Board deems appropriate to conduct the activities of the American Registry of Pathology; and

(2) charge such fees for professional services as the Board deems reasonable and appropriate.

(d) The American Registry of Pathology may transmit to the Director and the Board of Gov-

ernors of the Armed Forces Institute of Pathology and to the sponsors referred to in subsection (a)(2) annually, and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments.

(Added Pub. L. 94–361, title VIII, §811(b), July 14, 1976, 90 Stat. 934; amended Pub. L. 98–525, title XIV, §1405(5), Oct. 19, 1984, 98 Stat. 2622.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1), (4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which appears in chapter 5 (§29–501 et seq.) of Title 29, Corporations, of the District of Columbia Code.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''sec. 29–501'' for ''sec. 29–1001''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 176 of this title.

§178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the ''Foundation'') which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the ''Council'') composed of—

(A) the Chairmen and ranking minority members of the Committees on Armed Services of the Senate and the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,

(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and

(C) four members appointed by the ex officio members of the Council designated in clauses (A) and (B).

(2) The term of office of each member of the Council appointed under clause (C) of paragraph (1) shall be four years, except that—

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ex officio members of the Council at the time of the appointment, two at the end of two years and two at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to—

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

(Added Pub. L. 98–36, §2(a), May 27, 1983, 97 Stat. 200; amended Pub. L. 98–132, §2(a)(1), Oct. 17,

1983, 97 Stat. 849; Pub. L. 101–189, div. A, title VII, § 726(b)(2), Nov. 29, 1989, 103 Stat. 1480.)

AMENDMENTS

1989—Subsec. (g)(1). Pub. L. 101–189 inserted ‘‘, accept grants from, and make grants to’’ after ‘‘contracts with’’.

1983—Pub. L. 98–132, § 2(a)(1)(A), inserted ‘‘The Henry M. Jackson’’ before ‘‘Foundation’’ in section catchline.

Subsec. (a). Pub. L. 98–132, § 2(a)(1)(B), inserted ‘‘Henry M. Jackson’’.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CHANGE OF NAME TO ‘‘HENRY M. JACKSON FOUNDATION FOR THE ADVANCEMENT OF MILITARY MEDICINE’’

Section 1 of Pub. L. 98–132 provided: ‘‘That (a) the Foundation for the Advancement of Military Medicine established pursuant to section 178 of title 10, United States Code, shall be designated and hereafter known as the ‘Henry M. Jackson Foundation for the Advancement of Military Medicine’, in honor of the late Henry M. Jackson, United States Senator from the State of Washington. Any reference to the Foundation for the Advancement of Military Medicine in any law, regulation, document, record, or other paper of the United States shall be held and considered to be a reference to the ‘Henry M. Jackson Foundation for the Advancement of Military Medicine’.

‘‘(b) The Council of Directors referred to in subsection (c) of section 178 of such title shall take such action as is necessary under the Corporations and Associations Articles of the State of Maryland to amend the corporate name of the Foundation for the Advancement of Military Medicine established under such section to reflect the designation made by the first sentence of subsection (a).’’

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2113 of this title.

§ 179. Nuclear Weapons Council

(a) There is a Joint Nuclear Weapons Council (hereinafter in this section referred to as the ‘‘Council’’) composed of three members as follows:

(1) The Under Secretary of Defense for Acquisition and Technology.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) One senior representative of the Department of Energy designated by the Secretary of Energy.

(b)(1) Except as provided in paragraph (2), the Chairman of the Council shall be the member designated under subsection (a)(1).

(2) A meeting of the Council shall be chaired by the representative designated under subsection (a)(3) whenever the matter under consideration is within the primary responsibility or concern of the Department of Energy, as determined by majority vote of the Council.

(c)(1) The Secretary of Defense and the Secretary of Energy shall enter into an agreement with the Council to furnish necessary staff and administrative services to the Council.

(2) The Assistant to the Secretary of Defense for Atomic Energy shall be the Staff Director of the Council.

(d) The Council shall be responsible for the following matters:

(1) Preparing the annual Nuclear Weapons Stockpile Memorandum.

(2) Developing nuclear weapons stockpiles options and the costs of such options.

(3) Coordinating programming and budget matters pertaining to nuclear weapons programs between the Department of Defense and the Department of Energy.

(4) Identifying various options for cost-effective schedules for nuclear weapons production.

(5) Considering safety, security, and control issues for existing weapons and for proposed new weapon program starts.

(6) Ensuring that adequate consideration is given to design, performance, and cost tradeoffs for all proposed new nuclear weapons programs.

(7) Providing broad guidance regarding priorities for research on nuclear weapons.

(8) Coordinating and approving activities conducted by the Department of Energy for the study, development, production, and retirement of nuclear warheads, including concept definition studies, feasibility studies, engineering development, hardware component fabrication, warhead production, and warhead retirement.

(9) Preparing comments on annual proposals for budget levels for research on nuclear weapons and transmitting those comments to the Secretary of Defense and the Secretary of Energy before the preparation of the annual budget requests by the Secretaries of those departments.

(10) Providing—

(A) broad guidance regarding priorities for research on improved conventional weapons, and

(B) comments on annual proposals for budget levels for research on improved conventional weapons,

and transmitting such guidance and comments to the Secretary of Defense before the preparation of the annual budget request of the Department of Defense.

(e) Each fiscal year, at the same time the President submits the budget pursuant to section 1105 of title 31, the Chairman of the Council, through the Secretary of Energy, shall submit to the Committees on Armed Services and Appropriations of the Senate and House of Representatives a report, in classified form, on the following:

(1) The effectiveness and efficiency of the Council, and of the deliberative and decision-making processes used by the Council, in carrying out the responsibilities described in subsection (d).

(2) A description of all activities conducted by the Department of Energy during that fiscal year, or planned to be conducted by the Department of Energy during the next fiscal year, for the study, development, production, and retirement of nuclear warheads and that have been approved by the Council, including a description of—

(A) the concept definition activities and feasibility studies conducted or planned to be conducted by the Department of Energy;

(B) the schedule for completion of each such activity or study; and

(C) the degree to which each such activity or study is consistent with United States policy for new nuclear warhead development or warhead modification and with established or projected military requirements.

(Added Pub. L. 99–661, div. C, title I, §3137(a)(1), Nov. 14, 1986, 100 Stat. 4065; amended Pub. L. 100–180, div. A, title XII, §1231(2), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–456, div. A, title XII, §1233(h), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 102–484, div. C, title XXXI, §3133, Oct. 23, 1992, 106 Stat. 2639; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. C, title XXXI, §3152, Oct. 5, 1994, 108 Stat. 3090.)

AMENDMENTS

1994—Subsecs. (a)(3), (b). Pub. L. 103–337, §3152(c), substituted ''designated'' for ''appointed'' wherever appearing.

Subsec. (d)(8) to (10). Pub. L. 103–337, §3152(a), added par. (8) and redesignated former pars. (8) and (9) as (9) and (10), respectively.

Subsec. (e). Pub. L. 103–337, §3152(b), added subsec. (e).

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (a)(1). Pub. L. 102–484 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Director of Defense Research and Engineering.''

1988—Subsec. (e). Pub. L. 100–456 struck out subsec. (e) which read as follows: ''The Council shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report on the actions that have been taken by the Department of Defense and the Department of Energy to implement the recommendations of the President's Blue Ribbon Task Group on Nuclear Weapons Program Management. The Council shall include in such report its recommendation on the role and composition of the staff on the Council. The Council shall submit such report to the Committees not later than March 1, 1987.''

1987—Subsec. (e). Pub. L. 100–180 realigned margins of subsec. (e).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CHAIRMAN OF JCS TO SERVE ON COUNCIL IF THERE IS NO VICE CHAIRMAN OF JCS

Section 3137(b) of Pub. L. 99–661 provided that: ''If on the date of the enactment of this section [Nov. 14, 1986] the position of Vice Chairman of the Joint Chiefs of Staff, or comparable position, has not been established by law, the Chairman of the Joint Chiefs of Staff shall be a member of the Nuclear Weapons Council established by section 179 of title 10, United States Code, as added by subsection (a). If the position of Vice Chairman of the Joint Chiefs of Staff (or comparable position) is established by law after the date of the enactment of this section, the Chairman of the Joint Chiefs of Staff shall remain a member of such Council only until an individual has been appointed Vice Chairman of the Joint Chiefs of Staff.''

§180. Service academy athletic programs: review board

(a) INDEPENDENT REVIEW BOARD.—The Secretary of Defense shall appoint a board to review the administration of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

(b) COMPOSITION OF BOARD.—The Secretary shall appoint the members of the board from among distinguished administrators of institutions of higher education, members of Congress, members of the Boards of Visitors of the academies, and other experts in collegiate athletics programs. The Superintendents of the three academies shall be members of the board. The Secretary shall designate one member of the board, other than a Superintendent of an academy, as Chairman.

(c) DUTIES.—The board shall, on an annual basis—

(1) review all aspects of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy, including—

(A) the policies relating to the administration of such programs;

(B) the appropriateness of the balance between the emphasis placed by each academy on athletics and the emphasis placed by such academy on academic pursuits; and

(C) the extent to which all athletes in all sports are treated equitably under the athletics program of each academy; and

(2) determine ways in which the administration of the athletics programs at the academies can serve as models for the administration of athletics programs at civilian institutions of higher education.

(d) ADMINISTRATIVE PROVISIONS.—(1) Each member of the board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS–18 of the General Schedule under section 5332 of title 5, for each day (including travel time) during which such member is engaged in the performance of the duties of the board. Members of the board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) The members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the board.

(Added Pub. L. 102–190, div. A, title V, §513(a), Dec. 5, 1991, 105 Stat. 1360.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

Subchapter		Sec.
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SUBCHAPTER I—COMMON SUPPLY AND SERVICE ACTIVITIES

Sec.
191. Secretary of Defense: authority to provide for common performance of supply or service activities.
192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense.
193. Combat support agencies: oversight.
194. Limitations on personnel.

AMENDMENTS

1986—Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019, inserted ''AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES'' in chapter heading, added subchapter analysis and subchapter I analysis, and struck out former chapter analysis consisting of item 191 ''Unauthorized use of Defense Intelligence Agency name, initials, or seal''.

1985—Pub. L. 99–145, title XIII, § 1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 ''Benefits for certain employees of the Defense Intelligence Agency'' as item 1605 and transferred it to chapter 83 of this title.

1983—Pub. L. 98–215, title V, § 501(b), Dec. 9, 1983, 97 Stat. 1479, added item 192.

1982—Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1144, added chapter 8 heading and analysis of sections for chapter 8, consisting of a single item 191.

§ 191. Secretary of Defense: authority to provide for common performance of supply or service activities

(a) AUTHORITY.—Whenever the Secretary of Defense determines such action would be more effective, economical, or efficient, the Secretary may provide for the performance of a supply or service activity that is common to more than one military department by a single agency of the Department of Defense.

(b) DESIGNATION OF COMMON SUPPLY OR SERVICE AGENCY.—Any agency of the Department of Defense established under subsection (a) (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) for the performance of a supply or service activity referred to in such subsection shall be designated as a Defense Agency or a Department of Defense Field Activity.

(Added Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019; amended Pub. L. 100–26, § 7(i)(1), Apr. 21, 1987, 101 Stat. 282.)

REFERENCES IN TEXT

Subsection (d) of section 125 of this title, referred to in subsec. (b), was repealed by section 301(b)(1) of Pub. L. 99–433.

PRIOR PROVISIONS

A prior section 191 was renumbered section 202 of this title.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–26 substituted ''October 1, 1986'' for ''the date of the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986''.

REASSESSMENT OF DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

Section 303 of Pub. L. 99–433 directed Secretary of Defense to conduct a study of functions and organizational structure of Defense Agencies and Department of Defense Field Activities to determine the most effective, economical, or efficient means of providing supply or service activities common to more than one military department, with Secretary to submit a report to Congress not later than Oct. 1, 1987. The report was to include a study of improved application of computer systems to functions of Defense Agencies and Department of Defense Field Activities, including a plan for rapid replacement, where necessary, of existing automated data processing equipment with new equipment, and plans to achieve reductions in total number of members of Armed Forces and civilian employees assigned or detailed to permanent duty in Defense Agencies and Department of Defense Field Activities (other than National Security Agency) by 5 percent, 10 percent, and 15 percent of total number of such members and employees projected to be assigned or detailed to such duty on Sept. 30, 1988, together with a discussion of implications of each such reduction and a draft of any legislation that would be required to implement each such plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 113, 192 of this title.

§ 192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense

(a) OVERALL SUPERVISION.—(1) The Secretary of Defense shall assign responsibility for the overall supervision of each Defense Agency and Department of Defense Field Activity designated under section 191(b) of this title—

(A) to a civilian officer within the Office of the Secretary of Defense listed in section 131(b) of this title; or

(B) to the Chairman of the Joint Chiefs of Staff.

(2) An official assigned such a responsibility with respect to a Defense Agency or Department of Defense Field Activity shall advise the Secretary of Defense on the extent to which the program recommendations and budget proposals of such agency or activity conform with the requirements of the military departments and of the unified and specified combatant commands.

(3) This subsection does not apply to the Defense Intelligence Agency or the National Security Agency.

(b) PROGRAM AND BUDGET REVIEW.—The Secretary of Defense shall establish procedures to ensure that there is full and effective review of the program recommendations and budget proposals of each Defense Agency and Department of Defense Field Activity.

(c) PERIODIC REVIEW.—(1) Periodically (and not less often than every two years), the Secretary of Defense shall review the services and supplies provided by each Defense Agency and Department of Defense Field Activity to ensure that—

(A) there is a continuing need for each such agency and activity; and

(B) the provision of those services and supplies by each such agency and activity, rather than by the military departments, is a more effective, economical, or efficient manner of providing those services and supplies or of

meeting the requirements for combat readiness of the armed forces.

(2) Paragraph (1) shall apply to the National Security Agency as determined appropriate by the Secretary, in consultation with the Director of Central Intelligence. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1020.)

PRIOR PROVISIONS

A prior section 192, Pub. L. 98–215, title V, §501(a), Dec. 9, 1983, 97 Stat. 1478, which related to benefits for certain personnel of the Defense Intelligence Agency, was redesignated as section 1605 of this title and amended by Pub. L. 99–145, title XIII, §1302(a)(1), Nov. 8, 1985, 99 Stat. 737. Provisions of prior section 192 as related to members of the armed forces were enacted as section 431 of Title 37, Pay and Allowances of the Uniformed Services, by section 1302(b)(1) of Pub. L. 99–145.

FIRST REVIEW OF DEFENSE AGENCIES BY SECRETARY OF DEFENSE

Section 304(a) of Pub. L. 99–433 provided that: ''The first review under section 192(c) of title 10, United States Code (as added by section 301(a)), shall be completed not later than two years after the date that the report under section 303(e) [see section 303(f) of Pub. L. 99–433, set out as a note under section 191 of this title] is required to be submitted to Congress.''

§193. Combat support agencies: oversight

(a) COMBAT READINESS.—(1) Periodically (and not less often than every two years), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense a report on the combat support agencies. Each such report shall include—

(A) a determination with respect to the responsiveness and readiness of each such agency to support operating forces in the event of a war or threat to national security; and

(B) any recommendations that the Chairman considers appropriate.

(2) In preparing each such report, the Chairman shall review the plans of each such agency with respect to its support of operating forces in the event of a war or threat to national security. After consultation with the Secretaries of the military departments and the commanders of the unified and specified combatant commands, as appropriate, the Chairman may, with the approval of the Secretary of Defense, take steps to provide for any revision of those plans that the Chairman considers appropriate.

(b) PARTICIPATION IN JOINT TRAINING EXERCISES.—The Chairman shall—

(1) provide for the participation of the combat support agencies in joint training exercises to the extent necessary to ensure that those agencies are capable of performing their support missions with respect to a war or threat to national security; and

(2) assess the performance in joint training exercises of each such agency and, in accordance with guidelines established by the Secretary of Defense, take steps to provide for any change that the Chairman considers appropriate to improve that performance.

(c) READINESS REPORTING SYSTEM.—The Chairman shall develop, in consultation with the director of each combat support agency, a uniform system for reporting to the Secretary of Defense, the commanders of the unified and specified combatant commands, and the Secretaries of the military departments concerning the readiness of each such agency to perform with respect to a war or threat to national security.

(d) REVIEW OF NATIONAL SECURITY AGENCY.—(1) Subsections (a), (b), and (c) shall apply to the National Security Agency, but only with respect to combat support functions the Agency performs for the Department of Defense.

(2) The Secretary, after consulting with the Director of Central Intelligence, shall establish policies and procedures with respect to the application of subsections (a), (b), and (c) to the National Security Agency.

(e) COMBAT SUPPORT CAPABILITIES OF DIA AND NSA.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall develop and implement, as they may determine to be necessary, policies and programs to correct such deficiencies as the Chairman of the Joint Chiefs of Staff and other officials of the Department of Defense may identify in the capabilities of the Defense Intelligence Agency and the National Security Agency to accomplish assigned missions in support of military combat operations.

(f) DEFINITION OF COMBAT SUPPORT AGENCY.—In this section, the term ''combat support agency'' means any of the following Defense Agencies:

(1) The Defense Communications Agency.

(2) The Defense Intelligence Agency.

(3) The Defense Logistics Agency.

(4) The Defense Mapping Agency.

(5) Any other Defense Agency designated as a combat support agency by the Secretary of Defense.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1020.)

FIRST REPORT AND OTHER ACTIONS BY CHAIRMAN OF JOINT CHIEFS OF STAFF

Section 304(b) of Pub. L. 99–433 required the first report under subsec. (a) of section 193 of this title to be submitted and subsecs. (b) and (c) of section 193 to be implemented not later than one year after Oct. 1, 1986, and a report on implementation to be submitted to Congress for 1988 under section 113(c) of this title.

§194. Limitations on personnel

(a) CAP ON HEADQUARTERS MANAGEMENT PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(b) CAP ON OTHER PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management head-

quarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(c) PROHIBITION AGAINST CERTAIN ACTIONS TO EXCEED LIMITATIONS.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.

(d) EXCLUSION OF NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.

(e) WAIVER.—The limitations in this section do not apply—

(1) in time of war; or

(2) during a national emergency declared by the President or Congress.

(f) DEFINITIONS.—In this section, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Directive 5100.73, entitled ''Department of Defense Management Headquarters and Headquarters Support Activities'' and dated January 7, 1985.

(Added Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1021; amended Pub. L. 100–180, div. A, title XIII, § 1314(b)(3), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title XVI, § 1622(h)(1), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''The'' for ''After September 30, 1989, the''.

1987—Subsec. (e)(2). Pub. L. 100–180 inserted ''the President or'' after ''declared by''.

REDUCTIONS IN DEFENSE INTELLIGENCE AGENCY PERSONNEL

Pub. L. 100–202, § 101(b) [title VIII, § 8122], Dec. 22, 1987, 101 Stat. 1329–43, 1329–85, which provided that nothing in section 102d(1) of Public Law 100–178, 101 Stat. 1010, section 601(b)(2)(A) of Public Law 99–433, 100 Stat. 1065 [set out below], or section 601(d) of Public Law 99–433, 100 Stat. 1065 [set out below], shall be construed as requiring or suggesting that the Secretary of Defense avoid allocating personnel reductions to the Defense Intelligence Agency, was repealed by Pub. L. 100–456, div. A, title XII, § 1213, Sept. 29, 1988, 102 Stat. 2053.

REDUCTION IN PERSONNEL ASSIGNED TO MANAGEMENT HEADQUARTERS ACTIVITIES AND CERTAIN OTHER ACTIVITIES

Section 601 of Pub. L. 99–433, as amended by Pub. L. 100–180, div. A, title XIII, § 1312, Dec. 4, 1987, 101 Stat. 1174; Pub. L. 101–189, div. A, title XVI, § 1622(h)(2), Nov. 29, 1989, 103 Stat. 1606, provided that:

''(a) MILITARY DEPARTMENTS AND COMBATANT COMMANDS.—(1) The total number of members of the Armed Forces and civilian employees assigned or detailed to duty described in paragraph (2) may not exceed the number equal to 90 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(2) Duty referred to in paragraph (1) is permanent duty in the military departments and in the unified and specified combatant commands to perform management headquarters activities or management headquarters support activities.

''(3) In computing and implementing the limitation in paragraph (1), the Secretary of Defense shall exclude members and employees who are assigned or detailed to permanent duty to perform management headquarters activities or management headquarters support activities in the following:

''(A) The Office of the Secretary of the Army and the Army Staff.

''(B) The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.

''(C) The Office of the Secretary of the Air Force and the Air Staff.

''(D) The immediate headquarters staff of the commander of each unified or specified combatant command.

''(4) If the Secretary of Defense applies any reduction in personnel required by the limitation in paragraph (1) to a unified or specified combatant command, the commander of that command, after consulting with his directly subordinate commanders, shall determine the manner in which the reduction shall be accomplished.

''(b) DEFENSE AGENCIES AND DOD FIELD ACTIVITIES.—(1)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities and management headquarters support activities in the Defense Agencies and Department of Defense Field Activities by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 10 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

''(C) If the number of members and employees reduced under subparagraph (A) or (B) is in excess of the reduction required to be made by that subparagraph, such excess number may be applied to the number required to be reduced under paragraph (2).

''(2)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned or detailed to duty in management headquarters activities or management headquarters support activities, by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 5 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

''(3) If after the date of the enactment of this Act [Oct. 1, 1986] and before October 1, 1988, the total number of members and employees described in paragraph (1)(A) or (2)(A) is reduced by a number that is in excess of the number required to be reduced under that paragraph, the Secretary may, in meeting the additional reduction required by paragraph (1)(B) or (2)(B), as the case may be, offset such additional reduction by that excess number.

''(4) The National Security Agency shall be excluded in computing and making reductions under this subsection.

''(c) PROHIBITION AGAINST CERTAIN ACTIONS TO ACHIEVE REDUCTIONS.—Compliance with the limitations and reductions required by subsections (a) and (b) may not be accomplished by recategorizing or redefining duties, functions, offices, or organizations.

''(d) ALLOCATIONS TO BE MADE BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall allocate the reductions required to comply with the limitations in subsections (a) and (b) in a manner consistent with the efficient operation of the Department of Defense. If the Secretary determines that national security requirements dictate that a reduction (or any portion of a re-

duction) required by subsection (b) not be made from the Defense Agencies and Department of Defense Field Activities, the Secretary may allocate such reduction (or any portion of such reduction) (A) to personnel assigned or detailed to permanent duty in management headquarters activities or management headquarters support activities, or (B) to personnel assigned or detailed to permanent duty in other than management headquarters activities or management headquarters support activities, as the case may be, of the Department of Defense other than the Defense Agencies and Department of Defense Field Activities.

''(2) Among the actions that are taken to carry out the reductions required by subsections (a) and (b), the Secretary shall consolidate and eliminate unnecessary management headquarters activities and management headquarters support activities.

''(e) TOTAL REDUCTIONS.—Reductions in personnel required to be made under this section are in addition to any reductions required to be made under other provisions of this Act or any amendment made by this Act [see Short Title of 1986 Amendment note set out under section 111 of the title].

''(f) EXCLUSION.—In computing and making reductions under this section, there shall be excluded not more than 1,600 personnel transferred during fiscal year 1988 from the General Services Administration to the Department of Defense for the purpose of having the Department of Defense assume responsibility for the management, operation, and administration of certain real property under the jurisdiction of that Department.

''(g) DEFINITIONS.—For purposes of this section, the terms 'management headquarters activities' and 'management headquarters support activities' have the meanings given those terms in Department of Defense Directive 5100.73, entitled 'Department of Defense Management Headquarters and Headquarters Support Activities' and dated January 7, 1985.''

SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS

Sec.
201. Consultation regarding appointment of certain intelligence officials.
202. Unauthorized use of Defense Intelligence Agency name, initials, or seal.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title IX, §922(b), Dec. 5, 1991, 105 Stat. 1453, added item 201 and redesignated former item 201 as 202.

1986—Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1022, added subchapter heading and analysis of sections for subchapter II.

§201. Consultation regarding appointment of certain intelligence officials

Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency or Director of the National Security Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.

(Added Pub. L. 102–190, div. A, title IX, §922(a)(2), Dec. 5, 1991, 105 Stat. 1453.)

PRIOR PROVISIONS

A prior section 201 was renumbered section 202 of this title.

DEFENSE INTELLIGENCE AGENCY

Section 921 of Pub. L. 102–190, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(1), Oct. 5, 1994, 108 Stat. 2858, provided that:

''(a) SUPERVISION.—Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary of Defense referred to in section 138(b)(3) of title 10, United States Code, may during the period beginning on the date of the enactment of this Act [Dec. 5, 1991] and ending on January 1, 1993, be assigned supervision of the Defense Intelligence Agency but, notwithstanding any other provision of law, may not be assigned day-to-day operational control over the Defense Intelligence Agency.

''(b) RESPONSIBILITIES OF DIRECTOR.—Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the Director of the Defense Intelligence Agency during the period beginning on the date of the enactment of this Act [Dec. 5, 1991] and ending on January 1, 1993, shall include the following:

''(1) Providing intelligence and intelligence support to—

''(A) the Secretary of Defense;

''(B) the Director of Central Intelligence;

''(C) the Chairman of the Joint Chiefs of Staff; and

''(D) the commanders of the unified and specified combatant commands.

''(2) Managing the General Defense Intelligence Program, including—

''(A) preparing, reviewing, and submitting to the Secretary of Defense and the Director of Central Intelligence the budget proposal for that program for any fiscal year; and

''(B) supervising the overall execution of the budgets and programs of all functional areas within the General Defense Intelligence Program, with emphasis on science and technology activities, human intelligence activities, and imagery activities.

''(3) Ensuring that the roles and authorities of the functional managers within the Defense Intelligence Agency are strong enough to ensure that those managers have a significant role in the preparation, review, approval, and supervision of the overall execution of the budgets and programs within their areas of responsibility.

The provision of substantive intelligence by the Director to the officers named in paragraph (1) shall not be subject to prior screening by any other official.

''(c) TRANSFER OF CERTAIN ACTIVITIES TO DIA.—The Secretary of the Army and the Director of the Defense Intelligence Agency shall take all required actions, including transfer of all necessary resources, in order to transfer the Armed Forces Medical Intelligence Center and the Missile and Space Intelligence Center from the Department of the Army to the control of the Defense Intelligence Agency. Transfers pursuant to the preceding sentence shall be completed not later than January 1, 1992.''

JOINT INTELLIGENCE CENTER

Section 923 of Pub. L. 102–190 provided that:

''(a) REQUIREMENT FOR CENTER.—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

''(b) MANAGEMENT.—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

''(c) RESPONSIVENESS TO COMMAND AUTHORITIES.—The Secretary shall ensure that the center is fully responsive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.''

§ 202. Unauthorized use of Defense Intelligence Agency name, initials, or seal

(a) No person may, except with the written permission of the Secretary of Defense, knowingly use the words ''Defense Intelligence Agency'', the initials ''DIA'', the seal of the Defense Intelligence Agency, or any colorable imitation of such words, initials or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary of Defense.

(b) Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other actions as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1145, § 191; amended Pub. L. 98–525, title XIV, § 1405(6), Oct. 19, 1984, 98 Stat. 2622; renumbered § 201, Pub. L. 99–433, title III, § 301(a)(1), Oct. 1, 1986, 100 Stat. 1019; renumbered § 202, Pub. L. 102–190, div. A, title IX, § 922(a)(1), Dec. 5, 1991, 105 Stat. 1453.)

AMENDMENTS

1991—Pub. L. 102–190 renumbered section 201 of this title as this section.

1986—Pub. L. 99–433 renumbered section 191 of this title as this section.

1984—Subsec. (a). Pub. L. 98–525 substituted ''such use is'' for ''such use in''.

EFFECTIVE DATE

Section 703 of title VII of Pub. L. 97–269 provided that: ''The provisions of titles IV and V [enacting this section and amending section 403c of Title 50, War and National Defense] and of this title [which, except for enacting this note was not classified to the Code] shall become effective upon the date of the enactment of this Act [Sept. 27, 1982].''

CHAPTER 9—DEFENSE BUDGET MATTERS

Sec.
221. Future-years defense program: submission to Congress; consistency in budgeting.
222. Future-years mission budget.
226. Scoring of outlays.
227. Recruiting costs.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title III, § 374(b), Nov. 30, 1993, 107 Stat. 1637, added item 227.

1992—Pub. L. 102–484, div. A, title X, § 1002(d)(2), Oct. 23, 1992, 106 Stat. 2481, added items 221 and 222 and redesignated former item 221 as 226.

1991—Pub. L. 102–190, div. A, title X, § 1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, substituted ''DEFENSE BUDGET MATTERS'' for ''REGULAR COMPONENTS'' in chapter heading and added item 221.

§ 221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

(Added Pub. L. 101–189, div. A, title XVI, § 1602(a)(1), Nov. 29, 1989, 103 Stat. 1596, § 114a; amended Pub. L. 101–510, div. A, title XIV, § 1402(a)(1)–(3)(A), Nov. 5, 1990, 104 Stat. 1674; renumbered § 221 and amended Pub. L. 102–484, div. A, title X, § 1002(c), Oct. 23, 1992, 106 Stat. 2480.)

PRIOR PROVISIONS

A prior section 221 was renumbered section 226 of this title.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 114a of this title as this section, amended section catchline generally, and substituted ''future-years'' for ''multiyear'' wherever appearing in text.

1990—Pub. L. 101–510, § 1402(a)(3)(A), which directed amendment of section catchline by substituting ''Multiyear'' for ''Five-year'', was executed by substituting ''Multiyear'' for ''Five-Year'' as the probable intent of Congress.

Subsec. (a). Pub. L. 101–510, § 1402(a)(1), (2), substituted ''a multiyear'' for ''the current five-year'' and inserted at end ''Any such multiyear defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.''

Subsecs. (b)(2)(A), (c). Pub. L. 101–510, § 1402(a)(2)(A), substituted ''multiyear'' for ''five-year''.

PROGRAM ELEMENTS FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 103–337, div. A, title II, § 235, Oct. 5, 1994, 108 Stat. 2701, provided that: ''In the budget justification

materials submitted to Congress in support of the Department of Defense budget for any fiscal year after fiscal year 1995 (as submitted in the budget of the President), the amount requested for activities of the Ballistic Missile Defense Organization shall be set forth in accordance with the following program elements:

''(1) National Missile Defense.

''(2) Theater High-Altitude Area Defense (THAAD).

''(3) The Hawk Missile system.

''(4) Battle Management, Command, Control, Communications, and Intelligence (BM/C³I).

''(5) Patriot Advanced Capability-3 Missile System.

''(6) Patriot Advanced Capability-3 Missile risk reduction.

''(7) Navy Lower Tier Missile Defense.

''(8) Navy Upper Tier Missile Defense.

''(9) Army Corps Surface-to-Air Missile (CORPS SAM).

''(10) Boost Phase Intercept Program.

''(11) Other Theater Missile Defense Activities.

''(12) Support Technologies.

''(13) Program Management.''

BUDGET SUBMISSIONS ON SALARIES AND EXPENSES RELATED TO ADMINISTRATIVE ACTIVITIES

Pub. L. 103–335, title VIII, §8069, Sept. 30, 1994, 108 Stat. 2635, provided that: ''The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the Defense Agencies.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, §8082, Nov. 11, 1993, 107 Stat. 1458.

Pub. L. 102–396, title IX, §9132, Oct. 6, 1992, 106 Stat. 1936.

SUBMISSION OF MULTIYEAR DEFENSE PROGRAM

Section 1402(b) of Pub. L. 101–510 provided for limitations on obligation by Secretary of Defense of fiscal year 1991 advance procurement funds if, as of end of 90-day period beginning on date on which President's budget for fiscal year 1992 was submitted to Congress, the Secretary had not submitted to Congress fiscal year 1992 multiyear defense program.

MISSION ORIENTED PRESENTATION OF DEPARTMENT OF DEFENSE MATTERS IN BUDGET

Section 1404 of Pub. L. 101–510, directed President to submit with budget submitted to Congress each year of programs of Department of Defense, a budget that organizes programs within major functional category 050 (National Defense) on basis of major roles and missions of Department of Defense, prior to repeal by Pub. L. 102–484, div. A, title X, §1002(b), Oct. 23, 1992, 106 Stat. 2480. See section 222 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 222, 2501 of this title; title 50 section 404b.

§222. Future-years mission budget

(a) FUTURE-YEARS MISSION BUDGET.—The Secretary of Defense shall submit to Congress for each fiscal year a future-years mission budget for the military programs of the Department of Defense. That budget shall be submitted for any fiscal year not later than 60 days after the date on which the President's budget for that fiscal year is submitted to Congress pursuant to section 1105 of title 31.

(b) CONSISTENCY WITH FUTURE-YEARS DEFENSE PROGRAM.—The future-years mission budget shall be consistent with the future-years defense program required under section 221 of this title. In the future-years mission budget, the military programs of the Department of Defense shall be organized on the basis of major roles, missions, or forces of the Department of Defense.

(c) RELATIONSHIP TO OTHER DEFENSE BUDGET FORMATS.—The requirement in subsection (a) is in addition to the requirements in any other provision of law regarding the format for the presentation regarding military programs of the Department of Defense in the budget submitted pursuant to section 1105 of title 31 for any fiscal year.

(Added Pub. L. 102–484, div. A, title X, §1002(a)(2), Oct. 23, 1992, 106 Stat. 2480; amended Pub. L. 103–337, div. A, title X, §1004, Oct. 5, 1994, 108 Stat. 2834.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–510, div. A, title XIV, §1404, Nov. 5, 1990, 104 Stat. 1675, which was set out as a note under section 114a [now 221] of this title, prior to repeal by Pub. L. 102–484, §1002(b).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''not later than 60 days after the date on which'' for ''at the same time that''.

§226. Scoring of outlays

(a) ANNUAL OMB/CBO REPORT.—Not later than December 15 of each year, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall submit to the Speaker of the House of Representatives and the Committees on Armed Services, Appropriations, and the Budget of the Senate a joint report containing an agreed resolution of all differences between—

(1) the technical assumptions to be used by the Office of Management and Budget in preparing estimates with respect to all accounts in major functional category 050 (National Defense) for the budget to be submitted to Congress in the following year pursuant to section 1105 of title 31; and

(2) the technical assumptions to be used by the Congressional Budget Office in preparing estimates with respect to those accounts for that budget.

(b) USE OF AVERAGES.—If the two Directors are unable to agree upon any technical assumption, the report shall reflect the average of the relevant outlay rates or assumptions used by the two offices.

(c) MATTERS TO BE INCLUDED.—The report with respect to a budget shall identify the following:

(1) The agreed first-year and outyear outlay rates for each account in budget function 050 (National Defense) for each fiscal year covered by the budget.

(2) The agreed amount of outlays estimated to occur from unexpended appropriations made for fiscal years before the fiscal year that begins after submission of the report.

(Added Pub. L. 102–190, div. A, title X, §1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, §221; renumbered §226, Pub. L. 102–484, div. A, title X,

§ 1002(a)(1), Oct. 23, 1992, 106 Stat. 2480; amended Pub. L. 103–160, div. A, title XI, § 1104, Nov. 30, 1993, 107 Stat. 1749.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–189, § 5(a), Nov. 29, 1989, 103 Stat. 1364, which was set out as a note under section 114a [now 221] of this title, prior to repeal by Pub. L. 102–190, § 1002(b)(1).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''Not later than December 15 of each year'' for ''Not later than the day on which the budget for any fiscal year is submitted to Congress pursuant to section 1105 of title 31'' in introductory provisions and ''the budget to be submitted to Congress in the following year pursuant to section 1105 of title 31'' for ''that budget'' in par. (1).

1992—Pub. L. 102–484 renumbered section 221 of this title as this section.

SENSE OF CONGRESS REGARDING BUDGET RESOLUTIONS, BUDGET SCOREKEEPING, AND REQUIRED REDUCTIONS IN NATIONAL DEFENSE OUTLAYS

Pub. L. 101–189, § 5, Nov. 29, 1989, 103 Stat. 1364, as amended by Pub. L. 102–190, div. A, title X, § 1002(b), Dec. 5, 1991, 105 Stat. 1455, provided that:

''(a) SENSE OF CONGRESS REGARDING BUDGET RESOLUTIONS AND BUDGET SCOREKEEPING.—It is the sense of Congress that, in order to prevent a recurrence of a mismatch between budget authority and outlays for budget function 050 (National Defense), the technical assumptions contained in the report under section 221 [now 226] of title 10, United States Code, with respect to any budget should be used in the preparation of that budget, the preparation of the budget resolution, and in all scorekeeping in connection with budget function 050 (National Defense).

''(b) SENSE OF CONGRESS REGARDING REQUIRED REDUCTIONS AND OTHER CHANGES IN NATIONAL DEFENSE OUTLAYS IN RELATION TO BUDGET AUTHORITY.—It is the sense of Congress that the outlay level specified for national defense for any fiscal year in the budget resolution for that fiscal year should not require a reduction (or other change) in outlays for national defense for that fiscal year below (or in relation to) the estimated outlays specified for national defense in the budget for such fiscal year (submitted to Congress pursuant to section 1105 of title 31, United States Code) by more than the amount by which such estimated outlays would be reduced (or otherwise changed) if the amount of budget authority provided for in each title of the President's request for budget authority for national defense (as contained in such budget) were reduced (or otherwise changed) by the uniform percentage necessary for the requested budget authority for national defense to be equal to the budget authority specified for national defense in that budget resolution unless the budget resolution is accompanied by a report that describes the difference between the budget authority and outlays for National Defense (function 050) in the President's budget and the budget resolution.''

§ 227. Recruiting costs

The Secretary of Defense shall include in the budget justification documents submitted to Congress each year in connection with the submission of the budget pursuant to section 1105 of title 31 the following matters:

(1) The amount requested for the recruitment of persons for enlistment or appointment into the armed forces, including—

(A) the personnel costs for Department of Defense personnel whose duties include—

(i) recruitment;

(ii) the management of Department of Defense personnel performing recruitment duties; or

(iii) supporting Department of Defense personnel in the performance of duties referred to in clause (i) or (ii);

(B) the cost of providing support for such personnel for the performance of those duties;

(C) operation and maintenance costs associated with recruitment, including the costs of paid advertising and facilities;

(D) the costs of incentives, including—

(i) amounts paid under sections 302d, 308a, 308c, 308f, 308g, 308h (for a first enlistment), and 308i of title 37, relating to bonuses and other incentives;

(ii) amounts deposited in the Department of Defense Education Benefits Fund pursuant to section 2006(g) of this title; and

(iii) payments under the provisions of chapters 105, 107, and 109 of this title and chapter 30 of title 38; and

(E) costs associated with military entrance processing.

(2) The appropriation accounts from which such costs are to be paid.

(3) The estimated average total annual cost of recruiting a person for enlistment or appointment into the armed forces for the fiscal year covered by the budget, determined and shown separately for—

(A) each armed force;

(B) the active component of each armed force;

(C) each of the reserve components of each armed force; and

(D) for all of the armed forces.

(Added Pub. L. 103–160, div. A, title III, § 374(a), Nov. 30, 1993, 107 Stat. 1636.)

CHAPTER 11—RESERVE COMPONENTS

Sec.
261. Reference to chapters 1003, 1005, and 1007.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2979, added item 261 and struck out former items 261 to 281.

1993—Pub. L. 103–160, div. A, title VIII, § 828(c)(1), Nov. 30, 1993, 107 Stat. 1714, added item 279.

1984—Pub. L. 98–525, title XIV, § 1405(7)(C), Oct. 19, 1984, 98 Stat. 2622, in item 264 substituted ''armed force'' for ''military department'' and ''Reserves'' for ''reserves'' and struck out ''; reports to Congress'' at end.

1978—Pub. L. 95–485, title IV, § 406(b)(2), Oct. 20, 1978, 92 Stat. 1616, struck out item 279 ''Training reports''.

1967—Pub. L. 90–168, § 2(7), Dec. 1, 1967, 81 Stat. 522, substituted ''designation of general or flag officers of each military department; personnel and logistic support for reserves; reports to Congress'' for ''responsibility for'' in item 264.

1960—Pub. L. 86–559, § 1(2)(D), June 30, 1960, 74 Stat. 264, added item 281.

1958—Pub. L. 85–861, § 1(6), Sept. 2, 1958, 72 Stat. 1439, added items 270, 271, 272 and 279.

§ 261. Reference to chapters 1003, 1005, and 1007

Provisions of law relating to the reserve components generally, including provisions relating to the organization and administration of the reserve components, are set forth in chapter 1003

(beginning with section 10101), chapter 1005 (beginning with section 10141), and chapter 1007 (beginning with section 10201) of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2980.)

PRIOR PROVISIONS

Prior sections 261 to 265 were repealed by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994.

Section 261, act Aug. 10, 1956, ch. 1041, 70A Stat. 10, named the reserve components of the armed forces. See sections 10101 and 10213 of this title.

Section 262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 10; Dec. 1, 1967, Pub. L. 90–168, §2(5), 81 Stat. 521, related to purpose of reserve components. See section 10102 of this title.

Section 263, act Aug. 10, 1956, ch. 1041, 70A Stat. 11, related to basic policy for ordering Army National Guard of the United States and Air National Guard of the United States into Federal service. See section 10103 of this title.

Section 264, acts Aug. 10, 1956, ch. 1041, 70A Stat. 11; Dec. 1, 1967, Pub. L. 90–168, §2(6), 81 Stat. 521; Nov. 19, 1969, Pub. L. 91–121, title III, §303, 83 Stat. 206; Oct. 20, 1978, Pub. L. 95–485, title IV, §406(a), 92 Stat. 1616; Oct. 19, 1984, Pub. L. 98–525, title XIV, §1405(7)(A), (B), 98 Stat. 2622, authorized Secretaries of each armed force to designate officers to be responsible for reserve affairs and assigned responsibility for providing personnel and logistic support for reserves. See sections 10203 and 18501 of this title.

Section 265, act Aug. 10, 1956, ch. 1041, 70A Stat. 11, related to participation of reserve officers in preparation and administration of policies and regulations affecting reserve components. See section 10211 of this title.

Prior section 266 was renumbered section 12643 of this title.

Prior sections 267 to 281 were repealed by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994.

Section 267, act Aug. 10, 1956, ch. 1041, 70A Stat. 12, related to placement and status of members of Ready Reserve, Standby Reserve, and Retired Reserve. See section 10141(a), (b) of this title.

Section 268, acts Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85–861, §1(3), 72 Stat. 1437; Dec. 1, 1967, Pub. L. 90–168, §2(8), 81 Stat. 522; Oct. 12, 1982, Pub. L. 97–295, §1(5), 96 Stat. 1289, related to composition, organization, and structure of Ready Reserve. See sections 10142 and 10143 of this title.

Section 269, acts Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85–861, §1(4), 72 Stat. 1437; June 30, 1960, Pub. L. 86–559, §1(2)(A), 74 Stat. 264; Dec. 1, 1967, Pub. L. 90–168, §2(9), 81 Stat. 522; Oct. 20, 1978, Pub. L. 95–485, title IV, §405(a)(1), 92 Stat. 1615; Sept. 24, 1983, Pub. L. 98–94, title X, §1018, 97 Stat. 669; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1234(a)(1), 102 Stat. 2059, related to placement in and transfer from Ready Reserve. See sections 10145 and 10146 of this title.

Section 270, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 87–378, §2, Oct. 4, 1961, 75 Stat. 807; Pub. L. 88–110, §4, Sept. 3, 1963, 77 Stat. 136; Pub. L. 90–168, §2(10), Dec. 1, 1967, 81 Stat. 523; Pub. L. 92–156, title III, §303(a), Nov. 17, 1971, 85 Stat. 425; Pub. L. 96–513, title V, §511(7), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 100–456, div. A, title XII, §1234(a)(2), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–189, div. A, title V, §501(b), Nov. 29, 1989, 103 Stat. 1435, related to training requirements of Ready Reserve. See sections 10147 and 10148 of this title.

Section 271, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 95–485, title IV, §405(b), Oct. 20, 1978, 92 Stat. 1615, related to system of continuous screening of units and members of Ready Reserve. See section 10149 of this title.

Section 272, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 96–513, title V, §511(8), Dec. 12, 1980, 94 Stat. 2920, related to transfers back from Standby Reserve to Ready Reserve. See section 10150 of this title.

Section 273, act Aug. 10, 1956, ch. 1041, 70A Stat. 13, related to composition of Standby Reserve and maintenance of inactive status list in Standby Reserve. See sections 10151 to 10153 of this title.

Section 274, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; June 30, 1960, Pub. L. 86–559, §1(2)(B), 74 Stat. 264; Dec. 12, 1980, Pub. L. 96–513, title V, §511(9), 94 Stat. 2920, related to composition of Retired Reserve. See section 10154 of this title.

Section 275, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; Sept. 2, 1958, Pub. L. 85–861, §1(5)(B), 72 Stat. 1439, related to maintenance of personnel records of members of reserve components. See section 10204 of this title.

Section 276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; Apr. 21, 1987, Pub. L. 100–26, §7(k)(4), 101 Stat. 284, related to maintenance of mobilization forces. See section 10207 of this title.

Section 277, act Aug. 10, 1956, ch. 1041, 70A Stat. 14, prohibited discrimination in administering laws applicable to both Regulars and Reserves. See section 10209 of this title.

Section 278, act Aug. 10, 1956, ch. 1041, 70A Stat. 14, related to dissemination of information of interest to reserve components. See section 10210 of this title.

Section 279, added Pub. L. 103–160, div. A, title VIII, §822(d)(1), Nov. 30, 1993, 107 Stat. 1707, authorized acceptance of gratuitous services of officers of reserve components. See section 10212 of this title.

A prior section 279, added Pub. L. 85–861, §1(5)(C), Sept. 2, 1958, 72 Stat. 1439; amended Pub. L. 94–273, §11(2), Apr. 21, 1976, 90 Stat. 378, directed Secretary of Defense to report to President and Congress, in January of each year, on the status of training of each reserve component and the progress made in strengthening the reserve components during the preceding fiscal year, prior to repeal by Pub. L. 95–485, §406(b)(1).

Section 280, acts Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, Pub. L. 85–861, §33(a)(2), 72 Stat. 1564; Sept. 7, 1962, Pub. L. 87–651, title I, §101, 76 Stat. 506; Sept. 11, 1967, Pub. L. 90–83, §3(1), 81 Stat. 220; Aug. 17, 1977, Pub. L. 95–105, title V, §509(d)(3), 91 Stat. 860; Dec. 12, 1980, Pub. L. 96–513, title V, §§501(5), 511(10), 94 Stat. 2907, 2920; Oct. 19, 1984, Pub. L. 98–525, title XIV, §1405(8), 98 Stat. 2622; Dec. 5, 1991, Pub. L. 102–190, div. A, title X, §1061(a)(3), 105 Stat. 1472, authorized Secretary of each military department and Secretary of Transportation to prescribe regulations. See section 10202 of this title.

Section 281, added Pub. L. 86–559, §1(2)(C), June 30, 1960, 74 Stat. 264; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, provided that certain references in this title to the adjutant general or assistant adjutant general of the National Guard of a jurisdiction be applied to another officer of the National Guard performing the duties of that office. See section 10214 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 13—THE MILITIA

Sec.
311. Militia: composition and classes.
312. Militia duty: exemptions.

§311. Militia: composition and classes

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, Pub. L. 85–861, § 1(7), 72 Stat. 1439; Nov. 30, 1993, Pub. L. 103–160, div. A, title V, § 524(a), 107 Stat. 1656.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
311(a)	32:1 (less last 19 words).	June 3, 1916, ch. 134, § 57, 39 Stat. 197; June 28, 1947, ch. 162, § 7 (as applicable to § 57 of the Act of June 3, 1916, ch. 134), 61 Stat. 192.
311(b)	32:1 (last 19 words).	

In subsection (a), the words ''who have made a declaration of intention'' are substituted for the words ''who have or shall have declared their intention''. The words ''at least 17 years of age and * * * under 45 years of age'' are substituted for the words ''who shall be more than seventeen years of age and * * * not more than forty-five years of age''. The words ''except as provided in section 313 of title 32'' are substituted for the words ''except as hereinafter provided'', to make explicit the exception as to maximum age.

In subsection (b), the words ''The organized militia, which consists of the National Guard and the Naval Militia'' are substituted for the words ''the National Guard, the Naval Militia'', since the National Guard and the Naval Militia constitute the organized militia.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
311(a)	32 App.:1.	July 30, 1956, ch. 789, § 1, 70 Stat. 729.

The words ''appointed as . . . under section 4 of this title'' are omitted as surplusage.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''members'' for ''commissioned officers''.

1958—Subsec. (a). Pub. L. 85–861 included female citizens of the United States who are commissioned officers of the National Guard.

CROSS REFERENCES

Congressional power to provide for organization, equipment, discipline, and government of Militia, see Const. Art. I, § 8, cl. 16.

Declaration of intention to become a citizen of the United States, see section 1445 of Title 8, Aliens and Nationality.

§ 312. Militia duty: exemptions

(a) The following persons are exempt from militia duty:

(1) The Vice President.

(2) The judicial and executive officers of the United States, the several States and Territories, and Puerto Rico.

(3) Members of the armed forces, except members who are not on active duty.

(4) Customhouse clerks.

(5) Persons employed by the United States in the transmission of mail.

(6) Workmen employed in armories, arsenals, and naval shipyards of the United States.

(7) Pilots on navigable waters.

(8) Mariners in the sea service of a citizen of, or a merchant in, the United States.

(b) A person who claims exemption because of religious belief is exempt from militia duty in a combatant capacity, if the conscientious holding of that belief is established under such regulations as the President may prescribe. However, such a person is not exempt from militia duty that the President determines to be noncombatant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(3), 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
312(a)	32:3 (less last 67 words).	June 3, 1916, ch. 134, § 59, 39 Stat. 197.
312(b)	32:3 (last 67 words).	

In subsection (a), the words ''Members of the armed forces'' are substituted for the words ''persons in the military or naval service''. The words ''except members who are not on active duty'' are inserted to reflect an opinion of the Judge Advocate General of the Army (JAGA 1952/4374, 9 July 1952). The word ''artificers'' is omitted as covered by the word ''workmen''. The words ''naval shipyards'' are substituted for the words ''navy yards'' to reflect modern terminology. The words ''on navigable waters'' are inserted to preserve the original coverage of the word ''pilots''. The words ''actually'' and ''without regard to age'' are omitted as surplusage.

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–456 substituted ''and Puerto Rico'' for ''Puerto Rico, and the Canal Zone''.

CROSS REFERENCES

Deferments and exemptions from training and service under Military Selective Service Act, see section 456 of Appendix to Title 50, War and National Defense.

CHAPTER 15—INSURRECTION

Sec.
331. Federal aid for State governments.
332. Use of militia and armed forces to enforce Federal authority.
333. Interference with State and Federal law.
334. Proclamation to disperse.
335. Guam and Virgin Islands included as ''State''.
[336. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, § 511(11)(C), Dec. 12, 1980, 94 Stat. 2921, added item 335.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 115 of this title.

§ 331. Federal aid for State governments

Whenever there is an insurrections in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
331	50:201.	R.S. 5297.

The words ''armed forces'' are substituted for the words ''land or naval forces of the United States''. The word ''governor'' is substituted for the word ''executive''. The word ''may'' is substituted for the words ''it shall be lawful * * * to''. The words ''into Federal service'' are substituted for the word ''forth'' for uniformity and clarity.

CROSS REFERENCES

Army National Guard in Federal service, call, see section 12406 of this title.

Use of Army and Air Force as posse comitatus, see section 1385 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§332. Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
332	50:202.	R.S. 5298.

50:202 (last 22 words) is omitted as surplusage. The words ''armed forces'' are substituted for the words ''land and naval forces of the United States''. The words ''call into Federal service such of the militia'' are substituted for the words ''call forth the militia of any or all the States'' for clarity and uniformity. The word ''may'' is substituted for the words ''it shall be lawful''. The words ''faithful execution of the'' and ''in whatever State or Territory thereof the laws of the United States may be forcibly opposed'' are omitted as surplusage.

DERIVATION

Act July 29, 1861, ch. 25, §1, 12 Stat. 281.

EX. ORD. NO. 10730. ASSISTANCE FOR REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

Ex. Ord. No. 10730, Sept. 24, 1957, 22 F.R. 7628, authorized the Secretary of Defense to order into the active military service of the United States units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas for an indefinite period and until relieved by appropriate orders in order to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstructions to justice in respect to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas; authorized the Secretary of Defense to also use the armed forces of the United States to enforce such orders of the district court; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11053. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF MISSISSIPPI

Ex. Ord. No. 11053, Sept. 30, 1962, 27 F.R. 9681, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Mississippi for an indefinite period and until relieved by appropriate orders in order to enforce all orders of the United States District Court for the Southern District of Mississippi and of the United States Court of Appeals for the Fifth Circuit for the removal of obstructions to justice in the State of Mississippi; authorized the Secretary of Defense to also use the armed forces of the United States to enforce such court orders; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11111. ASSISTANCE FOR REMOVAL OF OBSTRUCTIONS OF JUSTICE AND SUPPRESSION OF UNLAWFUL COMBINATIONS WITHIN THE STATE OF ALABAMA

Ex. Ord. No. 11111, June 11, 1963, 28 F.R. 5709, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Alabama for an indefinite period and until relieved by appropriate orders in order to enforce the laws of the United States within that State and the orders of the United States District Court for the Northern District of Alabama, to remove obstructions to justice, and to suppress unlawful assemblies, conspiracies, and domestic violence which oppose the laws of the United States or impede the course of justice under those laws within that State; authorized the Secretary of Defense to also use the armed forces of the United States for such purposes; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11118. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF ALABAMA

Ex. Ord. No. 11118, Sept. 10, 1963, 28 F.R. 9863, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Alabama for an indefinite period and until relieved by appropriate orders in order to enforce the laws of the United States and any orders of United States Courts relating to the enrollment and attendance of students in public schools in the State of Alabama and to suppress unlawful assemblies, conspiracies, and domestic violence which oppose the law or impede the course of justice under the law within that State; authorized the Secretary of Defense to also use the armed forces of the United States for such purposes; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within

the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
333	50:203.	R.S. 5299.

The words ''armed forces'' are substituted for the words ''land or naval forces of the United States''. The word ''shall'' is substituted for the words ''it shall be lawful for * * * and it shall be his duty''.

DERIVATION

Act Apr. 20, 1871, ch. 22, § 3, 17 Stat. 14.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§ 334. Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
334	50:204.	R.S. 5300.

The words ''militia or the armed forces'' are substituted for the words ''military forces'' for clarity and to conform to sections 331, 332, and 333 of this title.

DERIVATION

Act July 29, 1861, ch. 25, § 2, 12 Stat. 282.

PROC. NO. 3204. OBSTRUCTION OF JUSTICE IN THE STATE OF ARKANSAS

Proc. No. 3204, Sept. 23, 1957, 22 F.R. 7628, commanded all persons in the State of Arkansas who were obstructing the enforcement of orders of the United States District Court for the Eastern District of Arkansas relating to enrollment and attendance at public schools, particularly Central High School at Little Rock, Arkansas, to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3497. OBSTRUCTION OF JUSTICE IN THE STATE OF MISSISSIPPI

Proc. No. 3497, Sept. 30, 1962, 27 F.R. 9681, commanded all persons in the State of Mississippi who were obstructing the enforcement of orders entered by the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit to cease and desist therefrom and to disperse and retire peaceably forthwith.

PROC. NO. 3542. UNLAWFUL OBSTRUCTION OF JUSTICE AND COMBINATIONS IN THE STATE OF ALABAMA

Proc. No. 3542, June 11, 1963, 28 F.R. 5707, commanded the Governor of the State of Alabama and all other persons who were obstructing the orders of the United States District Court for the Northern District of Alabama relating to the enrollment and attendance of Negro students at the University of Alabama to cease and desist therefrom.

PROC. NO. 3554. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3554, Sept. 10, 1963, 28 F.R. 9861, commanded all persons obstructing the enforcement of orders entered by the United States District Courts in the State of Alabama relating to the enrollment and attendance of students in public schools in that State to cease and desist therefrom and to disperse and retire peaceably forthwith.

PROC. NO. 3645. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3645, Mar. 23, 1965, 30 F.R. 3739, commanded all persons engaged or who may engage in domestic violence obstructing the enforcement of the laws and the judicial order approving the right to march along U.S. Highway 80 from Selma to Montgomery, Alabama commencing during the period from Mar. 19, 1965 to Mar. 22, 1965 and terminating within 5 days of the commencement to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3795. OBSTRUCTION OF JUSTICE IN THE STATE OF MICHIGAN

Proc. No. 3795, July 26, 1967, 32 F.R. 10905, commanded all persons engaged in domestic violence and disorder in Detroit, Michigan, and obstructing the enforcement of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3840. OBSTRUCTION OF JUSTICE IN THE WASHINGTON METROPOLITAN AREA

Proc. No. 3840, Apr. 9, 1968, 33 F.R. 5495, commanded all persons engaged in acts of violence threatening the Washington Metropolitan Area and obstructing the execution of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3841. OBSTRUCTION OF JUSTICE IN THE STATE OF ILLINOIS

Proc. No. 3841, Apr. 9, 1968, 33 F.R. 5497, commanded all persons engaged in violence in and about the City of Chicago and obstructing the enforcement of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3842. OBSTRUCTION OF JUSTICE IN THE STATE OF MARYLAND

Proc. No. 3842, Apr. 9, 1968, 33 F.R. 5499, commanded all persons engaged in acts of violence and obstructing the enforcement of the laws in and about the City of Baltimore to cease and desist therefrom and to disperse forthwith.

§ 335. Guam and Virgin Islands included as "State"

For purposes of this chapter, the term ''State'' includes the unincorporated territories of Guam and the Virgin Islands.

(Added Pub. L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847; amended Pub. L. 96–513, title V, § 511(11)(A), Dec. 12, 1980, 94 Stat. 2920.)

AMENDMENTS

1980—Pub. L. 96–513 inserted ''and Virgin Islands'' after ''Guam'' in section catchline and inserted provision respecting applicability to the Virgin Islands.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 11 of Pub. L. 90–497 provided that this section is effective on date of enactment of Pub. L. 90–497, which was approved on Sept. 11, 1968.

[§336. Repealed. Pub. L. 96–513, title V, §511(11)(B), Dec. 12, 1980, 94 Stat. 2921]

Section, added Pub. L. 90–496, §12, Aug. 23, 1968, 82 Stat. 841, included Virgin Islands within ''State''. See section 335 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 17—ARMING OF AMERICAN VESSELS

Sec.
351. During war or threat to national security.

§351. During war or threat to national security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16; Dec. 12, 1980, Pub. L. 96–513, title V, §511(12), 94 Stat. 2921.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
351(a)	50:481 (1st sentence, less 1st 7 words).	June 29, 1948, ch. 715, 62 Stat. 1095.
351(b)	50:481 (1st 7 words of 1st sentence and 2d sentence).	
351(c)	50:481 (less 1st and 2d sentences).	

In subsection (a), the wording of the special definition of ''vessel'' and ''American vessel'', contained in section 16 of the Neutrality Act of 1939, 54 Stat. 12 (22 U.S.C. 456), is substituted for the words ''any American vessel as defined in the Neutrality Act of 1939''.

In subsection (b), the words ''or national emergency'' are omitted, since the words of the source statute defining that term have been substituted for it.

In subsection (c), the words ''(relating to bonds from armed vessels on clearing)'' are omitted as surplusage.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–513 substituted ''Section 16 of the Act of March 4, 1909 (22 U.S.C. 463)'' for ''Section 463 of title 22''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CHAPTER 18—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.
371. Use of information collected during military operations.
372. Use of military equipment and facilities.
373. Training and advising civilian law enforcement officials.
374. Maintenance and operation of equipment.
375. Restriction on direct participation by military personnel.
376. Support not to affect adversely military preparedness.
377. Reimbursement.
378. Nonpreemption of other law.
379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.
380. Enhancement of cooperation with civilian law enforcement officials.
381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, §1122(a)(2), Nov. 30, 1993, 107 Stat. 1755, added item 381.

1989—Pub. L. 101–189, div. A, title XII, §1216(a), Nov. 29, 1989, 103 Stat. 1569, in chapter heading substituted ''18'' for ''8''.

1988—Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043, amended chapter analysis generally substituting, in chapter heading ''CHAPTER 8—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES'' for ''CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS'', in item 374 ''Maintenance and operation of equipment'' for ''Assistance by Department of Defense personnel'', in item 376 ''Support not to affect adversely military preparedness'' for ''Assistance not to affect adversely military preparedness'' and in item 380 ''Enhancement of cooperation with civilian law enforcement officials'' for ''Department of Defense drug law enforcement assistance: annual plan''.

1987—Pub. L. 100–180, div. A, title XII, §1243(b), Dec. 4, 1987, 101 Stat. 1164, added item 380.

1986—Pub. L. 99–570, title III, §3053(b)(2), Oct. 27, 1986, 100 Stat. 3207–76, added item 379.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 831.

§371. Use of information collected during military operations

(a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the De-

partment of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, designating existing provisions as subsec. (a), inserting reference to military training, and adding subsecs. (b) and (c).

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title III, § 3051, Oct. 27, 1986, 100 Stat. 3207–74, provided that: ''This subtitle [subtitle A (§§ 3051–3059) of title III of Pub. L. 99–570, enacting section 379 of this title, amending sections 374 and 911 of this title, enacting provisions set out as notes under sections 374, 525, and 9441 of this title, and repealing provisions set out as a note under section 89 of Title 14, Coast Guard] may be cited as the 'Defense Drug Interdiction Assistance Act'.''

§ 372. Use of military equipment and facilities

The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, inserting ''(including associated supplies or spare parts)'' and substituting ''Department of Defense'' for ''Army, Navy, Air Force, or Marine Corps''.

TRANSFER OF EXCESS PERSONAL PROPERTY

Pub. L. 101–189, div. A, title XII, § 1208, Nov. 29, 1989, 103 Stat. 1566, as amended by Pub. L. 102–484, div. A, title X, § 1044, Oct. 23, 1992, 106 Stat. 2493, provided that:

''(a) TRANSFER AUTHORIZED.—(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is—

''(A) suitable for use by such agencies in counterdrug activities; and

''(B) excess to the needs of the Department of Defense.

''(2) Personal property transferred under this section may be transferred without cost to the recipient agency.

''(3) The Secretary shall carry out this section in consultation with the Attorney General and the Director of National Drug Control Policy.

''(b) CONDITIONS FOR TRANSFER.—The Secretary may transfer personal property under this section only if—

''(1) the property is drawn from existing stocks of the Department of Defense; and

''(2) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment.

''(c) APPLICATION.—The authority of the Secretary to transfer personal property under this section shall expire on September 30, 1997.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 373, 374 of this title.

§ 373. Training and advising civilian law enforcement officials

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available—

(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and

(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 99–145, title XIV, § 1423(a), Nov. 8, 1985, 99 Stat. 752; Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, substituting provisions authorizing Secretary of Defense, in accordance with applicable law, to make Defense Department personnel available for training, etc., for former subsecs. (a) to (c) authorizing Secretary of Defense to assign members of Army, Navy, Air Force, and Marine Corps, etc., for training, etc., briefing sessions by Attorney General, and other functions of Attorney General and Administrator of General Services.

1985—Pub. L. 99–145 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1423(b) of Pub. L. 99–145 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1986.''

§ 374. Maintenance and operation of equipment

(a) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available for the maintenance of equipment for Federal, State, and local civilian law enforcement officials, including equipment made available under section 372 of this title.

(b)(1) Subject to paragraph (2) and in accordance with other applicable law, the Secretary of Defense may, upon request from the head of a Federal law enforcement agency, make Department of Defense personnel available to operate equipment (including equipment made available under section 372 of this title) with respect to—

(A) a criminal violation of a provision of law specified in paragraph (4)(A); or

(B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar laws.

(2) Department of Defense personnel made available to a civilian law enforcement agency under this subsection may operate equipment for the following purposes:

(A) Detection, monitoring, and communication of the movement of air and sea traffic.

(B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(C) Aerial reconnaissance.

(D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A).

(F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)—

(i) the transportation of civilian law enforcement personnel; and

(ii) the operation of a base of operations for civilian law enforcement personnel.

(3) Department of Defense personnel made available to operate equipment for the purpose stated in paragraph (2)(D) may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.

(4) In this subsection:

(A) The term ''Federal law enforcement agency'' means an agency with jurisdiction to enforce any of the following:

(i) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(ii) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328).

(iii) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) or any other territory or possession of the United States.

(iv) The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(B) The term ''land area of the United States'' includes the land area of any territory, commonwealth, or possession of the United States.

(c) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in subsection (b)(2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 98–525, title XIV, §1405(9), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–570, title III, §3056, Oct. 27, 1986, 100 Stat. 3207–77; Pub. L. 99–661, div. A, title XIII, §1373(c), Nov. 14, 1986, 100 Stat. 4007; Pub. L. 100–418, title I, §1214(a)(1), Aug. 23, 1988, 102 Stat. 1155; Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043; Pub. L. 101–189, div. A, title XII, §§1210, 1216(b), (c), Nov. 29, 1989, 103 Stat. 1566, 1569; Pub. L. 102–484, div. A, title X, §1042, Oct. 23, 1992, 106 Stat. 2492.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (b)(4)(A)(i), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (b)(4)(A)(i), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 13 of Title 21. For complete classification of the Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(4)(A)(iii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Maritime Drug Law Enforcement Act, referred to in subsec. (b)(4)(A)(iv), is Pub. L. 96–350, Sept. 15, 1980, 94 Stat. 1159, as amended, which is classified generally to chapter 38 (§1901 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1901 of Title 46, Appendix, and Tables.

AMENDMENTS

1992—Subsec. (b)(2)(B) to (F). Pub. L. 102–484, §1042(1), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (b)(3). Pub. L. 102–484, §1042(2), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)''.

1989—Subsec. (b)(2)(E). Pub. L. 101–189, §1210, substituted ''and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)'' for '', the Attorney General, and the Secretary of State, in connection with a law enforcement operation outside the land area of the United States'' in introductory provisions.

Subsec. (b)(4)(A)(iii). Pub. L. 101–189, §1216(b), substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 of the Tariff Schedules of the United States''.

Subsec. (c). Pub. L. 101–189, §1216(c), substituted ''subsection (b)(2)'' for ''paragraph (2)''.

1988—Pub. L. 100–456 substituted ''Maintenance and operation of equipment'' for ''Assistance by Department of Defense personnel'' in section catchline, and amended text generally, revising and restating former subsecs. (a) to (d) as subsecs. (a) to (c).

Subsec. (a)(3). Pub. L. 100–418, which directed substitution of ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 of the Tariff Schedules of the United States'', could not be executed because of intervening general amendment by Pub. L. 100–456.

1986—Subsec. (a). Pub. L. 99–570, §3056(a), inserted provision at end relating to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.

Subsec. (c). Pub. L. 99–570, §3056(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if—

''(A) equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft; and

''(B) the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

''(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when—

''(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

''(B) enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.''

Subsec. (d). Pub. L. 99–661 added subsec. (d).

1984—Subsec. (a)(3). Pub. L. 98–525 struck out ''(19 U.S.C. 1202)'' after ''Tariff Schedules of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

COUNTER-DRUG ACTIVITIES; CONDITIONS ON TRANSFERS OF FUNDS AND DETAILING PERSONNEL; RELATIONSHIP TO OTHER LAW

Pub. L. 103–337, div. A, title X, § 1011(b)–(d), Oct. 5, 1994, 108 Stat. 2836, provided that:

''(b) CONDITION ON TRANSFER OF FUNDS.—Funds appropriated for the Department of Defense may not be transferred to a National Drug Control Program agency account except to the extent provided in a law that specifically states—

''(1) the amount authorized to be transferred;

''(2) the account from which such amount is authorized to be transferred; and

''(3) the account to which such amount is authorized to be transferred.

''(c) CONDITION ON DETAILING PERSONNEL.—Personnel of the Department of Defense may not be detailed to another department or agency in order to implement the National Drug Control Strategy unless the Secretary of Defense certifies to Congress that the detail of such personnel is in the national security interest of the United States.

''(d) RELATIONSHIP TO OTHER LAW.—A provision of law may not be construed as modifying or superseding the provisions of subsection (b) or (c) unless that provision of law—

''(1) specifically refers to this section; and

''(2) specifically states that such provision of law modifies or supersedes the provisions of subsection (b) or (c), as the case may be.''

Pub. L. 103–335, title VIII, § 8154(a), Sept. 30, 1994, 108 Stat. 2658, provided that: ''None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.''

ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES

Pub. L. 101–510, div. A, title X, § 1004, Nov. 5, 1990, 104 Stat. 1629, as amended by Pub. L. 102–190, div. A, title X, § 1088(a), Dec. 5, 1991, 105 Stat. 1484; Pub. L. 102–484, div. A, title X, § 1041(a)–(d)(1), Oct. 23, 1992, 106 Stat. 2491; Pub. L. 103–160, div. A, title XI, § 1121(a), (b), Nov. 30, 1993, 107 Stat. 1753; Pub. L. 103–337, div. A, title X, § 1011(a), Oct. 5, 1994, 108 Stat. 2836, provided that:

''(a) SUPPORT TO OTHER AGENCIES.—During fiscal years 1991 through 1999, the Secretary of Defense may provide support for the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

''(1) by the official who has responsibility for the counter-drug activities of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

''(2) by the appropriate official of a State or local government, in the case of support for State or local law enforcement agencies; or

''(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities, in the case of support for foreign law enforcement agencies.

''(b) TYPES OF SUPPORT.—The purposes for which the Secretary may provide support under subsection (a) are the following:

''(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local government by the Department of Defense for the purposes of—

''(A) preserving the potential future utility of such equipment for the Department of Defense; and

''(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

''(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in subparagraph (A) for the purpose of—

''(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

''(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

''(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities within or outside the United States.

''(4) The establishment (including unspecified minor construction) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities within or outside the United States.

''(5) Counter-drug related training of law enforcement personnel of the Federal Government, of State and local governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

''(6) The detection, monitoring, and communication of the movement of—

''(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

''(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

''(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

''(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

''(9) The provision of linguist and intelligence analysis services.

''(10) Aerial and ground reconnaissance.

''(c) LIMITATION ON COUNTER-DRUG REQUIREMENTS.—The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

''(d) CONTRACT AUTHORITY.—In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense

would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

''(e) LIMITED WAIVER OF PROHIBITION.—Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

''(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1564) [10 U.S.C. 124 note]) for the purpose of aiding civilian law enforcement agencies.

''(g) RELATIONSHIP TO OTHER LAWS.—(1) The authority provided in this section for the support of counter-drug activities by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

''(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title 10, United States Code.''

COMMUNICATIONS NETWORK

Section 1103 of Pub. L. 100–456, which related to integration of United States assets dedicated to interdiction of illegal drugs into an effective communications network, was repealed by Pub. L. 101–189, div. A, title XII, §1204(b), Nov. 29, 1989, 103 Stat. 1564. See section 1204(a) of Pub. L. 101–189 set out as a note under section 124 of this title.

ENHANCED DRUG INTERDICTION AND ENFORCEMENT ROLE FOR NATIONAL GUARD

Section 1105 of Pub. L. 100–456, which related to funding and training of National Guard for purpose of drug interdiction and enforcement operations and for operation and maintenance of equipment and facilities for such purpose, was repealed by Pub. L. 101–189, div. A, title XII, §1207(b), Nov. 29, 1989, 103 Stat. 1566. See section 112 of Title 32, National Guard.

ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE

Section 3057 of Pub. L. 99–570 provided that:

''(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act [Oct. 27, 1986], the Secretary of Defense shall submit to the Congress the following:

''(A) A detailed list of all forms of assistance that shall be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service.

''(B) A detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

''(2) The list required by paragraph (1)(A) shall include, but not be limited to, a description of the following matters:

''(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

''(B) Communications equipment, including secure communications.

''(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

''(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

''(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

''(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

''(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

''(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

''(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Congress receives the list and plan submitted under such subsection, the Committees on Armed Services of the Senate and the House of Representatives shall submit their approval or disapproval of such list and plan to the Secretary of Defense. Upon receipt of such approval or disapproval, the Secretary shall immediately convene a conference of the heads of the Federal Government agencies with jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

''(c) EQUIPMENT SUBJECT TO SECTION 3052(c).—Equipment identified in this section is subject to the provisions of section 3052(c) [100 Stat. 3207–75].

''(d) APPLICABILITY.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

''(e) REVIEW BY GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b). Not later than 90 days after the date on which the conference is convened under subsection (b), the Comptroller General shall transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 379 of this title.

§375. Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(Added Pub. L. 97–86, title IX §905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 100–456, div.

A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub. L. 101–189, div. A, title XII, § 1211, Nov. 29, 1989, 103 Stat. 1567.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''any activity'' for ''the provision of any support'', struck out ''to any civilian law enforcement official'' after ''any personnel)'', and substituted ''a search, seizure, arrest,'' for ''a search and seizure, an arrest,''.

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.''

§ 376. Support not to affect adversely military preparedness

Support (including the provision of any equipment or facility or the assignment or detail of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness of the United States. The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that the provision of any such support does not adversely affect the military preparedness of the United States.

(Added Pub. L. 97–86, title, IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 substituted ''Support'' for ''Assistance'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any such assistance does not adversely affect the military preparedness of the United States.''

§ 377. Reimbursement

(a) To the extent otherwise required by section 1535 of title 31 (popularly known as the ''Economy Act'') or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b) An agency to which support is provided under this chapter is not required to reimburse the Department of Defense for such support if such support—

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.''

§ 378. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

(Added Pub. L. 97–86, title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 98–525, title XIV, § 1405(10), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 reenacted section without change.

1984—Pub. L. 98–525 substituted ''before December 1, 1981'' for ''prior to the enactment of this chapter''.

§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

(a) The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

(2) as are otherwise within the jurisdiction of the Coast Guard.

(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Transportation, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(b)(4)(A) of this title.

(d) In this section, the term ''drug-interdiction area'' means an area outside the land area of the United States (as defined in section 374(b)(4)(B) of this title) in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.

(Added Pub. L. 99–570, title III, § 3053(b)(1), Oct. 27, 1986, 100 Stat. 3207–75; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, substituting ''every appropriate surface naval vessel'' for ''appropriate surface naval vessels'' in subsec. (a), substituting ''section 374(b)(4)(A)'' for ''section 374(a)(1)'' in subsec. (c), and inserting ''(as defined in section 374(b)(4)(B) of this title)'' in subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 637.

§380. Enhancement of cooperation with civilian law enforcement officials

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.

(b) Each briefing conducted under subsection (a) shall include the following:

(1) An explanation of the procedures for civilian law enforcement officials—

(A) to obtain information, equipment, training, expert advice, and other personnel support under this chapter; and

(B) to obtain surplus military equipment.

(2) A description of the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense.

(3) A current, comprehensive list of military equipment which is suitable for law enforcement officials from the Department of Defense or available as surplus property from the Administrator of General Services.

(c) The Attorney General and the Administrator of General Services shall—

(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(3) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and

(2) make available to civilian law enforcement personnel nationwide, tollfree telephone communication with such office or offices.

(Added Pub. L. 100–180, div. A, title XII, §1243(a), Dec. 4, 1987, 101 Stat. 1163; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2046.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, substituting provisions relating to annual briefing of law enforcement personnel of each State by Secretary of Defense and Attorney General and establishment of offices and telephone communication with those offices regarding surplus military equipment for provisions requiring the Secretary to report to Congress on the availability of assistance, etc., to civilian law enforcement and drug interdiction agencies and to convene a conference and requiring the Comptroller General to monitor and report on the Secretary's compliance with those requirements.

§381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense

(a) PROCEDURES.—(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase law enforcement equipment suitable for counter-drug activities through the Department of Defense. The procedures shall require the following:

(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:

(i) A request for law enforcement equipment.

(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.

(B) A State may include in a request submitted under subparagraph (A) only the type of equipment listed in the catalog produced under subsection (c).

(C) A request for law enforcement equipment shall consist of an enumeration of the law enforcement equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures as the Governor considers appropriate for administering and coordinating requests for law enforcement equipment from units of local government within the State.

(D) A State requesting law enforcement equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.

(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.

(b) REIMBURSEMENT OF ADMINISTRATIVE COSTS.—In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of such purchase.

(c) GSA CATALOG.—The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of law enforcement equipment suitable for counter-drug activities for purchase by States and units of local government under the procedures established by the Secretary under this section.

(d) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

(3) The term ''law enforcement equipment suitable for counter-drug activities'' has the meaning given such term in regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes.

(Added Pub. L. 103–160, div. A, title XI, § 1122(a)(1), Nov. 30, 1993, 107 Stat. 1754.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DEADLINE FOR ESTABLISHING PROCEDURES

Section 1122(b) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall establish procedures under section 381(a) of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Nov. 30, 1993].''

CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Subchapter		Sec.
I.	Humanitarian Assistance	401
II.	Civil-Military Cooperation	410

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, § 1081(b)(2), Oct. 23, 1992, 106 Stat. 2516, added subchapter analysis.

1987—Pub. L. 100–180, div. A, title III, § 332(b)(6), Dec. 4, 1987, 101 Stat. 1080, substituted ''HUMANITARIAN AND OTHER ASSISTANCE'' for ''HUMANITARIAN AND CIVIC ASSISTANCE PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS'' in chapter heading.

SUBCHAPTER I—HUMANITARIAN ASSISTANCE

Sec.
401. Humanitarian and civic assistance provided in conjunction with military operations.
402. Transportation of humanitarian relief supplies to foreign countries.
403. International peacekeeping activities.
404. Foreign disaster assistance.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XIV, § 1412(b), Oct. 5, 1994, 108 Stat. 2913, added item 404.

1992—Pub. L. 102–484, div. A, title X, § 1081(b)(2), title XIII, § 1342(c)(2), Oct. 23, 1992, 106 Stat. 2516, 2558, added subchapter heading and item 403.

1987—Pub. L. 100–180, div. A, title III, § 332(b)(6), Dec. 4, 1987, 101 Stat. 1080, substituted ''Humanitarian and civic assistance provided in conjunction with military operations'' for ''Armed forces participation in humanitarian and civic assistance activities'' in item 401, ''Transportation of humanitarian relief supplies to foreign countries'' for ''Approval of Secretary of State'' in item 402, and struck out items 403 ''Payment of expenses'', 404 ''Annual report to Congress'', 405 ''Definition of humanitarian and civic assistance'', and 406 ''Expenditure limitation''.

§ 401. Humanitarian and civic assistance provided in conjunction with military operations

(a)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces in a country if the Secretary concerned determines that the activities will promote—

(A) the security interests of both the United States and the country in which the activities are to be carried out; and

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian and civic assistance activities carried out under this section shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

(3) Humanitarian and civic assistance may not be provided under this section (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activity.

(b) Humanitarian and civic assistance may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance.

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

(2) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1), except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance.

(d) The Secretary of Defense shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report—

(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

(3) the amount expended in carrying out each such activity in each such country during the preceding fiscal year.

(e) In this section, the term ''humanitarian and civic assistance'' means—

(1) medical, dental, and veterinary care provided in rural areas of a country;

(2) construction of rudimentary surface transportation systems;

(3) well drilling and construction of basic sanitation facilities; and

(4) rudimentary construction and repair of public facilities.

(Added Pub. L. 99–661, div. A, title III, §333(a)(1), Nov. 14, 1986, 100 Stat. 3857; amended Pub. L. 100–180, div. A, title III, §332(b)(1)–(5), Dec. 4, 1987, 101 Stat. 1080; Pub. L. 100–456, div. A, title XII, §1233(g)(1), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title XI, §1182(a)(1), title XV, §1504(b), Nov. 30, 1993, 107 Stat. 1771, 1839.)

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–160, §1504(b), inserted before period '', except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance''.

Subsec. (f). Pub. L. 103–160, §1182(a)(1), struck out subsec. (f) which read as follows: ''Not more than $16,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.''

1988—Subsec. (c)(2). Pub. L. 100–456 substituted ''paragraph (1)'' for ''subsection (a)''.

1987—Pub. L. 100–180, §332(b)(1)(A), substituted ''Humanitarian and civic assistance provided in conjunction with military operations'' for ''Armed forces participation in humanitarian and civic assistance activities'' in section catchline.

Subsec. (a). Pub. L. 100–180, §332(b)(1)(B), (C), (5), redesignated former subsec. (a) as par. (1) and former cls. (1) and (2) as cls. (A) and (B), respectively, redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively, and substituted ''section'' for ''chapter'' wherever appearing.

Subsec. (b). Pub. L. 100–180, §332(b)(2), (5), struck out section catchline of former section 402 ''Approval of Secretary of State'', designated text of former section 402 as subsec. (b) of this section, and substituted ''section'' for ''chapter''.

Subsec. (c). Pub. L. 100–180, §332(b)(3), (5), struck out section catchline of former section 403 ''Payment of expenses'', redesignated former section 403(a) and (b) as subsec. (c)(1) and (2), respectively, of this section, and substituted ''section'' for ''chapter'' wherever appearing.

Subsec. (d). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 404 ''Annual report to Congress'', designated text of former section 404 as subsec. (d) of this section, and substituted ''section'' for ''chapter''.

Subsec. (e). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 405 ''Definition of humanitarian and civic assistance'', designated text of former section 405 as subsec. (e) of this section, and substituted ''section'' for ''chapter''.

Subsec. (f). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 406 ''Expenditure limitation'', designated text of former section 406 as subsec. (f) of this section, and substituted ''section'' for ''chapter''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

HUMANITARIAN ASSISTANCE PROGRAM FOR CLEARING LANDMINES

Pub. L. 103–337, div. A, title XIV, §1413, Oct. 5, 1994, 108 Stat. 2913, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall carry out a program for humanitarian purposes to provide assistance to other nations in the detection and clearance of landmines. Such assistance shall be provided through instruction, education, training, and advising of personnel of those nations in the various procedures that have been determined effective for detecting and clearing landmines.

''(b) FORMS OF ASSISTANCE.—The Secretary may provide assistance under subsection (a) by—

''(1) providing Department of Defense personnel to conduct the instruction, education, or training or to furnish advice; or

''(2) providing financial assistance or in-kind assistance in support of such instruction, education, or training.

''(c) LIMITATION ON UNITED STATES MILITARY PERSONNEL.—The Secretary of Defense shall ensure that no member of the Armed Forces of the United States—

''(1) while providing assistance under subsection (a), engages in the physical detection, lifting, or destroying of landmines (unless the member does so for the concurrent purpose of supporting a United States military operation); or

''(2) provides such assistance as part of a military operation that does not involve the Armed Forces of the United States.

''(d) USE OF FUNDS.—Of the amount authorized to be appropriated by section 301 [108 Stat. 2706] for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) programs of the Department of Defense, not more than $20,000,000 shall be available for the program under subsection (a). Such amount may be used—

''(1) for activities to support the clearing of landmines for humanitarian purposes, including activities relating to the furnishing of education, training, and technical assistance;

''(2) for the provision of equipment and technology by transfer or lease to a foreign government that is participating in a landmine clearing program under this section; and

''(3) for contributions to nongovernmental organizations that have experience in the clearing of landmines to support activities described in subsection (a).

''(e) NOTICE TO CONGRESS.—The Secretary of Defense shall provide notice to Congress of any activity carried out under this section.''

HUMANITARIAN AND CIVIC ASSISTANCE

Section 1504 of Pub. L. 103–160 provided that:

''(a) REGULATIONS.—The regulations required to be prescribed under section 401 of title 10, United States Code, shall be prescribed not later than March 1, 1994. In prescribing such regulations, the Secretary of Defense shall consult with the Secretary of State.

''(b) LIMITATION ON USE OF FUNDS.—[Amended section 401(c)(2) of this title.]

''(c) NOTIFICATIONS REGARDING HUMANITARIAN RELIEF.—Any notification provided to the appropriate congressional committees with respect to assistance activities under section 2551 of title 10, United States Code, shall include a detailed description of any items for which transportation is provided that are excess nonlethal supplies of the Department of Defense, including the quantity, acquisition value, and value at the time of the transportation of such items.

''(d) REPORT ON HUMANITARIAN ASSISTANCE ACTIVITIES.—(1) The Secretary of Defense shall submit to the

appropriate congressional committees a report on the activities planned to be carried out by the Department of Defense during fiscal year 1995 under sections 401, 402, 2547, and 2551 of title 10, United States Code. The report shall include information, developed after consultation with the Secretary of State, on the distribution of excess nonlethal supplies transferred to the Secretary of State during fiscal year 1993 pursuant to section 2547 of that title.

''(2) The report shall be submitted at the same time that the President submits the budget for fiscal year 1995 to Congress pursuant to section 1105 of title 31, United States Code.

''(e) AUTHORIZATION OF APPROPRIATIONS.—The funds authorized to be appropriated by section 301(18) [107 Stat. 1616] shall be available to carry out humanitarian and civic assistance activities under sections 401, 402, and 2551 of title 10, United States Code.

''(f) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term 'appropriate congressional committees' means—

''(1) the Committee on Appropriations, the Committee on Armed Services [now Committee on National Security], and the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives; and

''(2) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate.''

HUMANITARIAN ASSISTANCE; EMERGENCY TRANSPORTATION OF INDIVIDUALS

Pub. L. 102–396, title II, Oct. 6, 1992, 106 Stat. 1884, provided: ''That where required and notwithstanding any other provision of law, funds made available under this heading [Humanitarian Assistance] for fiscal year 1993 or thereafter, shall be available for emergency transportation of United States or foreign nationals or the emergency transportation of humanitarian relief personnel in conjunction with humanitarian relief operations.''

APPROPRIATION OF FUNDS FOR HUMANITARIAN AND CIVIC ASSISTANCE; ANNUAL REPORT TO CONGRESS ON OBLIGATIONS; USE OF CIVIC ACTION TEAMS IN TRUST TERRITORIES OF PACIFIC ISLANDS AND FREELY ASSOCIATED STATES OF MICRONESIA

Pub. L. 103–335, title VIII, § 8011, Sept. 30, 1994, 108 Stat. 2619, provided that: ''Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to Congress on September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239 [48 U.S.C. 1901 note]: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.''

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, § 8012, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102–396, title IX, § 9021, Oct. 6, 1992, 106 Stat. 1904.

Pub. L. 102–172, title VIII, § 8021, Nov. 26, 1991, 105 Stat. 1175.

Pub. L. 101–511, title VIII, § 8021, Nov. 5, 1990, 104 Stat. 1879.

Pub. L. 101–165, title IX, § 9031, Nov. 21, 1989, 103 Stat. 1135.

Pub. L. 100–463, title VIII, § 8051, Oct. 1, 1988, 102 Stat. 2270–25.

Pub. L. 100–202, § 101(b) [title VIII, § 8063], Dec. 22, 1987, 101 Stat. 1329–43, 1329–73.

§ 402. Transportation of humanitarian relief supplies to foreign countries

(a) Notwithstanding any other provision of law, and subject to subsection (b), the Secretary of Defense may transport to any country, without charge, supplies which have been furnished by a nongovernmental source and which are intended for humanitarian assistance. Such supplies may be transported only on a space available basis.

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that—

(A) the transportation of such supplies is consistent with the foreign policy of the United States;

(B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;

(C) there is a legitimate humanitarian need for such supplies by the people for whom they are intended;

(D) the supplies will in fact be used for humanitarian purposes; and

(E) adequate arrangements have been made for the distribution of such supplies in the destination country.

(2) The President shall establish procedures for making the determinations required under paragraph (1). Such procedures shall include inspection of supplies before acceptance for transport.

(3) It shall be the responsibility of the donor to ensure that supplies to be transported under this section are suitable for transport.

(c)(1) Supplies transported under this section may be distributed by an agency of the United States Government, a foreign government, an international organization, or a private nonprofit relief organization.

(2) Supplies transported under this section may not be distributed, directly or indirectly, to any individual, group, or organization engaged in a military or paramilitary activity.

(d) Not later than July 31 each year, the Secretary of State shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

(Added Pub. L. 100–180, div. A, title III, § 332(a), Dec. 4, 1987, 101 Stat. 1079; amended Pub. L.

101–510, div. A, title XIII, §1311(2), Nov. 5, 1990, 104 Stat. 1669.)

PRIOR PROVISIONS

A prior section 402 was renumbered section 401(b) of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''Not later than July 31 each year'' for ''At the end of each six-month period'' and ''the 12-month period ending on the preceding June 30'' for ''such six-month period''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(2) delegated to Secretary of State by section 1–201(a)(24) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of Title 22, Foreign Relations and Intercourse.

FIRST REPORT DEADLINE

Section 332(d) of Pub. L. 100–180 directed that first report under section 402(d) of this title be submitted not more than six months after the date on which the most recent report was submitted under section 1540(e) of the Department of Defense Authorization Act, 1985 (Pub. L. 98–525; 98 Stat. 2638).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 5463.

§403. International peacekeeping activities

(a) AUTHORITY.—To the extent provided in defense authorization Acts and appropriations Acts, the Secretary of Defense may furnish assistance in support of international peacekeeping activities of the United Nations or any regional organization of which the United States is a member.

(b) FORMS OF ASSISTANCE.—Assistance provided under subsection (a) may include funds, supplies, services, and equipment. Any funds so provided shall be derived from amounts available to the Department of Defense for the fiscal year for which the assistance is provided.

(c) LIMITATIONS.—Funds may be provided as assistance pursuant to subsection (a) for a fiscal year—

(1) only if funds available to the Department of State for that fiscal year for contributions for international peacekeeping activities are insufficient or otherwise unavailable to meet the United States' fair share of costs for international peacekeeping activities, as determined by the President;

(2) only to the extent that such funds are required to meet unexpected and urgent requirements;

(3) only to the extent that the United States' fair share of such costs exceeds the amount that the President requests Congress to appropriate for the Department of State for such fiscal year for international peacekeeping activities;

(4) only if the United States has received written commitments that the United States will be fully and promptly reimbursed by the United Nations or the regional organization involved for outstanding obligations incurred through an arrangement designated under United Nations practices as a ''letter of assist'' or a similar arrangement for logistics support, supplies, services, and equipment provided by the Department of Defense on a contract basis to the United Nations or the regional organization involved; and

(5) only if the Department of Defense will receive any reimbursement to the United States from the United Nations or a regional organization for outstanding obligations incurred through an arrangement designated under United Nations practices as a ''letter of assist'' or a similar arrangement for logistics support, supplies, services, and equipment provided by the Department of Defense on a contract basis to the United Nations or the regional organization involved, unless such reimbursement to the Department of Defense is otherwise precluded by law.

(d) CONSULTATION.—The Secretary of Defense shall consult with the Secretary of State before furnishing any assistance pursuant to subsection (a).

(e) DETERMINATIONS REQUIRED.—No assistance may be furnished pursuant to subsection (a) unless the Secretary of Defense certifies to Congress that the provision of such assistance will not adversely affect the military preparedness of the United States.

(f) ADVANCE NOTICE TO CONGRESS.—Not less than 30 days before obligating any funds for purposes of subsection (a), the Secretary of Defense shall transmit to Congress a report on the proposed obligation. The report shall—

(1) specify the account, budget activity, and particular program or programs from which the funds proposed to be obligated are to be derived and the amount of the proposed obligation;

(2) specify the activities and forms of assistance for which the Secretary of Defense plans to obligate such funds; and

(3) include the certification required by subsection (e).

(g) DEFINITION.—In this section, the term ''defense authorization Act'' means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including the activities described in paragraph (7) of section 114(a) of this title.

(h) TERMINATION.—The authority of the Secretary of Defense to furnish assistance under subsection (a) shall expire on September 30, 1994.

(Added Pub. L. 102–484, div. A, title XIII, §1342(c)(1), Oct. 23, 1992, 106 Stat. 2557; amended Pub. L. 103–160, div. A, title XV, §1501(b), (c), Nov. 30, 1993, 107 Stat. 1836.)

PRIOR PROVISIONS

A prior section 403 was renumbered section 401(c) of this title.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–160, §1501(b), struck out ''Related to Availability of State Department Funds''

after ''Limitations'' in heading, struck out ''and'' at end of pars. (1) and (2), substituted a semicolon for period at end of par. (3), and added pars. (4) and (5).

Subsec. (h). Pub. L. 103–160, § 1501(c), substituted ''September 30, 1994'' for ''September 30, 1993''.

SUPPORT FOR PEACEKEEPING ACTIVITIES

Section 1342(a) of Pub. L. 102–484 provided that: ''The Congress makes the following findings:

''(1) International peacekeeping activities contribute to the national interests of the United States in maintaining global stability and order.

''(2) International peacekeeping activities take many forms and include observer missions, ceasefire monitoring, human rights monitoring, refugee and humanitarian assistance, monitoring and conducting elections, monitoring of police in the demobilization of former combatants, and reforming judicial and other civil and administrative systems of government.

''(3) International peacekeeping activities traditionally involve the presence of military troops, police forces, and, in recent years, civilian experts in transportation, logistics, medicine, electoral systems, human rights, land tenure, other economic and social issues, and other areas of expertise.

''(4) International peacekeeping activities serve both the foreign policy interests and defense policy interests of the United States.

''(5) The normal budget process of authorizing and appropriating funds a year in advance and reprogramming such funds is insufficient to satisfy the need for funds for peacekeeping efforts arising from an unanticipated crisis.

''(6) Greater flexibility is needed to ensure the timely availability of funding to provide for peacekeeping activities.''

§ 404. Foreign disaster assistance

(a) IN GENERAL.—The President may direct the Secretary of Defense to provide disaster assistance outside the United States to respond to manmade or natural disasters when necessary to prevent loss of lives.

(b) FORMS OF ASSISTANCE.—Assistance provided under this section may include transportation, supplies, services, and equipment.

(c) NOTIFICATION REQUIRED.—Not later than 48 hours after the commencement of disaster assistance activities to provide assistance under this section, the President shall transmit to Congress a report containing notification of the assistance provided, and proposed to be provided, under this section and a description of so much of the following as is then available:

(1) The manmade or natural disaster for which disaster assistance is necessary.

(2) The threat to human lives presented by the disaster.

(3) The United States military personnel and material resources that are involved or expected to be involved.

(4) The disaster assistance that is being provided or is expected to be provided by other nations or public or private relief organizations.

(5) The anticipated duration of the disaster assistance activities.

(d) ORGANIZING POLICIES AND PROGRAMS.—Amounts appropriated to the Department of Defense for any fiscal year for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) programs of the Department shall be available for organizing general policies and programs for disaster relief programs for disasters occurring outside the United States.

(Added Pub. L. 103–337, div. A, title XIV, § 1412(a), Oct. 5, 1994, 108 Stat. 2912.)

PRIOR PROVISIONS

A prior section 404 was renumbered section 401(d) of this title.

[§ 405. Renumbered § 401(e)]

[§ 406. Renumbered § 401(f)]

SUBCHAPTER II—CIVIL-MILITARY COOPERATION

Sec.
410. Civil-Military Cooperative Action Program.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, § 1081(b)(1), Oct. 23, 1992, 106 Stat. 2515, added subchapter heading and analysis consisting of item 410.

§ 410. Civil-Military Cooperative Action Program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a program to be known as the ''Civil-Military Cooperative Action Program''. Under the program, the Secretary may, in accordance with other applicable law, use the skills, capabilities, and resources of the armed forces to assist civilian efforts to meet the domestic needs of the United States.

(b) PROGRAM OBJECTIVES.—The program shall have the following objectives:

(1) To enhance individual and unit training and morale in the armed forces through meaningful community involvement of the armed forces.

(2) To encourage cooperation between civilian and military sectors of society in addressing domestic needs.

(3) To advance equal opportunity.

(4) To enrich the civilian economy of the United States through education, training, and transfer of technological advances.

(5) To improve the environment and economic and social conditions.

(6) To provide opportunities for disadvantaged citizens of the United States.

(c) ADVISORY COUNCILS.—(1) The Secretary of Defense shall encourage the establishment of advisory councils on civil-military cooperation at the regional, State, and local levels, as appropriate, in order to obtain recommendations for projects and activities under the program and guidance for the program from persons who are knowledgeable about regional, State, and local conditions and needs.

(2) The advisory councils should include officials from relevant military organizations, representatives of appropriate local, State, and Federal agencies, representatives of civic and social service organizations, business representatives, and labor representatives.

(3) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to such councils.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the provision of assistance under the program. The regulations shall include the following:

(1) Rules governing the types of assistance that may be provided.

(2) Procedures governing the delivery of assistance that ensure, to the maximum extent practicable, that such assistance is provided in conjunction with, rather than separate from, civilian efforts.

(3) Procedures for appropriate coordination with civilian officials to ensure that the assistance—

(A) meets a valid need; and

(B) does not duplicate other available public services.

(4) Procedures for the provision of assistance in a manner that does not compete with the private sector.

(5) Procedures to minimize the extent to which Department of Defense resources are applied exclusively to the program.

(6) Standards to ensure that assistance is provided under this section in a manner that is consistent with the military mission of the units of the armed forces involved in providing the assistance.

(e) CONSTRUCTION OF PROVISION.—Nothing in this section shall be construed as authorizing—

(1) the use of the armed forces for civilian law enforcement purposes; or

(2) the use of Department of Defense personnel or resources for any program, project, or activity that is prohibited by law.

(Added Pub. L. 102–484, div. A, title X, §1081(b)(1), Oct. 23, 1992, 106 Stat. 2515.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c)(3), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PILOT OUTREACH PROGRAM TO REDUCE DEMAND FOR ILLEGAL DRUGS

Section 1045 of Pub. L. 102–484 provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense shall conduct a pilot outreach program to reduce the demand for illegal drugs. The program shall include outreach activities by the active and reserve components of the Armed Forces and shall focus primarily on youths in general and inner-city youths in particular.

''(b) PAYMENT OF TRAVEL AND LIVING EXPENSES.—The Secretary of Defense may provide travel and living allowances to members of the Armed Forces who participate in the pilot outreach program to permit such members to carry out demand reduction activities in areas beyond the vicinity of military installations and National Guard facilities.

''(c) FUNDING.—Funds available to the Department of Defense for drug interdiction and counter-drug activities may be used for carrying out the pilot outreach program described in subsection (a).

''(d) DURATION OF PROGRAM.—The pilot outreach program described in subsection (a) shall be conducted for a test period ending three years after the date of the enactment of this Act [Oct. 23, 1992].

''(e) REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress a report that assesses the effectiveness of the pilot outreach program and includes the recommendations of the Secretary regarding the continuation of the program.''

CONGRESSIONAL FINDINGS

Section 1081(a) of Pub. L. 102–484 provided that: ''Congress makes the following findings:

''(1) Many of the skills, capabilities, and resources that the Armed Forces have developed to meet military requirements can assist in meeting the civilian domestic needs of the United States.

''(2) Members of the Armed Forces have the training, education, and experience to serve as role models for United States youth.

''(3) As a result of the reductions in the Armed Forces resulting from the ending of the Cold War, the Armed Forces will have fewer overseas deployments and lower operating tempos, and there will be a much greater opportunity than in the past for the Armed Forces to assist civilian efforts to address critical domestic problems.

''(4) The United States has significant domestic needs in areas such as health care, nutrition, education, housing, and infrastructure that cannot be met by current and anticipated governmental and private sector programs.

''(5) There are significant opportunities for the resources of the Armed Forces, which are maintained for national security purposes, to be applied in cooperative efforts with civilian officials to address these vital domestic needs.

''(6) Civil-military cooperative efforts can be undertaken in a manner that is consistent with the military mission and does not compete with the private sector.''

CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Subchapter		Sec.
I.	General Matters	421
II.	Intelligence Commercial Activities	431

AMENDMENTS

1991—Pub. L. 102–88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added items for subchapters I and II.

SUBCHAPTER I—GENERAL MATTERS

Sec.

421. Funds for foreign cryptologic support.

422. Counterintelligence official reception and representation expenses.

423. Authority to use proceeds from counterintelligence operations of the military departments.

424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency.

425. Disclosure of personnel information: exemption for National Reconnaissance Office.

AMENDMENTS

1993—Pub. L. 103–178, title V, §503(a)(2), Dec. 3, 1993, 107 Stat. 2039, added item 425.

1991—Pub. L. 102–88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added subchapter heading.

1989—Pub. L. 101–189, div. A, title XVI, §1622(c)(2), Nov. 29, 1989, 103 Stat. 1604, substituted ''Funds for foreign cryptologic support'' for ''Funds for Foreign Cryptologic Support'' in item 421.

1988—Pub. L. 100–453, title VII, §§701(b), 703(b), Sept. 29, 1988, 102 Stat. 1912, 1913, in item 421 substituted ''Funds for Foreign Cryptologic Support'' for ''Funds transfers for foreign cryptologic support'' and added item 424.

1987—Pub. L. 100–180, div. A, title XII, §1231(3), Dec. 4, 1987, 101 Stat. 1160, substituted ''departments'' for ''department'' in item 423.

§421. Funds for foreign cryptologic support

(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

(b) The Secretary of Defense may use funds other than appropriated funds to pay for the ex-

penses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.). Funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.

(Added Pub. L. 96–450, title IV, § 401(a), Oct. 14, 1980, 94 Stat. 1977, § 140a; amended Pub. L. 97–258, § 3(b)(2), Sept. 13, 1982, 96 Stat. 1063; renumbered § 128 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(5), Oct. 1, 1986, 100 Stat. 994, 1002; renumbered § 421, Pub. L. 100–26, § 9(a)(2), Apr. 21, 1987, 101 Stat. 287; Pub. L. 100–453, title VII, § 701(a), Sept. 29, 1988, 102 Stat. 1911; Pub. L. 101–189, div. A, title XVI, § 1622(c)(3), Nov. 29, 1989, 103 Stat. 1604.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.). Funds'' for ''House pursuant to the provisions of title V of the National Security Act of 1947, as amended, and funds''.

1988—Pub. L. 100–453 struck out ''transfers'' after ''Funds'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense may use funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.''

1987—Pub. L. 100–26 renumbered section 128 of this title as this section.

1986—Pub. L. 99–433 renumbered section 140a of this title as section 128 of this title and substituted ''Funds'' for ''Secretary of Defense: funds'' in section catchline.

1982—Pub. L. 97–258 struck out provision that payments under this section could be made without regard to section 3651 of the Revised Statutes of the United States (31 U.S.C. 543).

COMPREHENSIVE INDEPENDENT STUDY OF NATIONAL CRYPTOGRAPHY POLICY

Pub. L. 103–160, div. A, title II, § 267, Nov. 30, 1993, 107 Stat. 1611, directed Secretary of Defense, not later than 90 days after Nov. 30, 1993, to request National Research Council of National Academy of Sciences to conduct a comprehensive study to assess effect of cryptographic technologies on national security, law enforcement, commercial, and privacy interests, and effect of export controls on commercial interests, with cooperation of other agencies, and report findings and conclusions within 2 years after processing of security clearances to Secretary of Defense, and directed Secretary to submit a report in unclassified form to Committee on Armed Services, Committee on the Judiciary, and Select Committee on Intelligence of Senate and to Committee on Armed Services, Committee on the Judiciary, and Permanent Select Committee on Intelligence of House of Representatives, not later than 120 days after the report is submitted to the Secretary.

§ 422. Counterintelligence official reception and representation expenses

The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.

(Added Pub. L. 99–569, title IV, § 401(c), Oct. 27, 1986, 100 Stat. 3195, § 140a; renumbered § 422, Pub. L. 100–26, § 9(a)(3), Apr. 21, 1987, 101 Stat. 287.)

AMENDMENTS

1987—Pub. L. 100–26 renumbered section 140a of this title as this section.

§ 423. Authority to use proceeds from counterintelligence operations of the military departments

(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, use of proceeds from counterintelligence operations conducted by components of the military departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make exceptional performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.

(Added Pub. L. 99–569, title IV, § 403(a), Oct. 27, 1986, 100 Stat. 3196, § 140b; renumbered § 423 and amended Pub. L. 100–26, § 9(a)(3), (b)(3), Apr. 21, 1987, 101 Stat. 287.)

AMENDMENTS

1987—Pub. L. 100–26 renumbered section 140b of this title as this section and struck out ''United States Code,'' after ''section 3302 of title 31,'' in subsec. (a).

§424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency

(a) Except as required by the President or as provided in subsection (b), the Secretary of Defense may not be required to disclose information with respect to—

(1) the organization or any function of the Defense Intelligence Agency; or

(2) the number of persons employed by or assigned or detailed to such Agency or the name, official title, occupational series, grade, or salary of any such person.

(b) This section does not apply—

(1) with respect to the provision of information to Congress; or

(2) with respect to information required to be disclosed by section 552 or 552a of title 5.

(Added Pub. L. 100–178, title VI, §603(a), Dec. 2, 1987, 101 Stat. 1016, §1607; renumbered §424 and amended Pub. L. 100–453, title VII, §703(a), Sept. 29, 1988, 102 Stat. 1912.)

AMENDMENTS

1988—Pub. L. 100–453 renumbered section 1607 of this title as this section, substituted ''Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency'' for ''Exemption from disclosing organizational and personnel data'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding the provisions of any other law, and except as provided herein and as required by section 552 or section 552a of title 5, United States Code, the Defense Intelligence Agency shall not be required to disclose the organization or any function of the Defense Intelligence Agency or the names, official titles, occupational series, grades, salaries or numbers of personnel employed by such Agency. This section shall not apply to information provided the Congress.''

DISCLOSURE OF GOVERNMENTAL AFFILIATION BY DEPARTMENT OF DEFENSE INTELLIGENCE PERSONNEL OUTSIDE OF UNITED STATES

Pub. L. 103–359, title V, §503, Oct. 14, 1994, 108 Stat. 3430, provided that:

''(a) IN GENERAL.—Notwithstanding section 552a(e)(3) of title 5, United States Code, intelligence personnel of the Department of Defense who are authorized by the Secretary of Defense to collect intelligence from human sources shall not be required, when making an initial assessment contact outside the United States, to give notice of governmental affiliation to potential sources who are United States persons.

''(b) RECORDS.—Records concerning such contacts shall be maintained by the Department of Defense and made available upon request to the appropriate committees of the Congress in accordance with applicable security procedures. Such records shall include for each such contact an explanation of why notice of government affiliation could not reasonably be provided, the nature of the information obtained from the United States person as a result of the contact, and whether additional contacts resulted with the person concerned.

''(c) DEFINITIONS.—For the purposes of this section—

''(1) the term 'United States' includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

''(2) the term 'United States person' means any citizen, national, or permanent resident alien of the United States.''

EXEMPTION FOR NATIONAL RECONNAISSANCE OFFICE FROM ANY REQUIREMENT FOR DISCLOSURE OF PERSONNEL INFORMATION

Pub. L. 102–496, title IV, §406, Oct. 24, 1992, 106 Stat. 3186, which provided that, except as required by President and except with respect to provision of information to Congress, nothing in Pub. L. 102–496 or any other provision of law was to be construed to require disclosure of name, title, or salary of any person employed by, or assigned or detailed to, National Reconnaissance Office or disclosure of number of such persons, was repealed and restated in section 425 of this title by Pub. L. 103–178, title V, §503(a)(1), (b), Dec. 3, 1993, 107 Stat. 2038, 2039.

§425. Disclosure of personnel information: exemption for National Reconnaissance Office

(a) EXEMPTION FROM DISCLOSURE.—Except as required by the President or as provided in subsection (b), no provision of law shall be construed to require the disclosure of the name, title, or salary of any person employed by, or assigned or detailed to, the National Reconnaissance Office or the disclosure of the number of such persons.

(b) PROVISION OF INFORMATION TO CONGRESS.—Subsection (a) does not apply with respect to the provision of information to Congress.

(Added Pub. L. 103–178, title V, §503(a)(1), Dec. 3, 1993, 107 Stat. 2038.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 102–496, title IV, §406, Oct. 24, 1992, 106 Stat. 3186, which was set out as a note under section 424 of this title, prior to repeal by Pub. L. 103–178, §503(b).

SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES

Sec.
431. Authority to engage in commercial activities as security for intelligence collection activities.
432. Use, disposition, and auditing of funds.
433. Relationship with other Federal laws.
434. Reservation of defenses and immunities.
435. Limitations.
436. Regulations.
437. Congressional oversight.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, §1052(1), Oct. 23, 1992, 106 Stat. 2499, inserted ''Sec.'' above item ''431''.

1991—Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 437, added subchapter heading and analysis of sections.

§431. Authority to engage in commercial activities as security for intelligence collection activities

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 1995.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of Central Intelligence; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term ''commercial activities'' means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term ''intelligence collection activities'' means the collection of foreign intelligence and counterintelligence information.

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437.)

EFFECTIVE DATE

Section 504(b) of Pub. L. 102–88 provided that: ''The Secretary of Defense may not authorize any activity under section 431 of title 10, United States Code, as added by subsection (a), until the later of—

''(1) the end of the 90-day period beginning on the date of the enactment of this Act [Aug. 14, 1991]; or

''(2) the effective date of regulations first prescribed under section 436 of such title, as added by subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of this title.

§ 432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of all such audits shall be promptly reported to the intelligence committees (as defined in section 437(d) of this title).

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 437 of this title.

§ 433. Relationship with other Federal laws

(a) IN GENERAL.—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) FEDERAL LAWS AND REGULATIONS.—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

(1) The receipt and use of appropriated and nonappropriated funds.

(2) The acquisition or management of property or services.

(3) Information disclosure, retention, and management.

(4) The employment of personnel.

(5) Payments for travel and housing.

(6) The establishment of legal entities or government instrumentalities.

(7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 436, 437 of this title.

§ 434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§ 435. Limitations

(a) LAWFUL ACTIVITIES.—Nothing in this subchapter authorizes the conduct of any intel-

ligence activity that is not otherwise authorized by law or Executive order.

(b) DOMESTIC ACTIVITIES.—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities abroad.

(c) PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) NOTICE TO UNITED STATES PERSONS.—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term ''United States person'' means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§436. Regulations

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the Defense Intelligence Agency to be responsible for the management and supervision of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 437 of this title.

§437. Congressional oversight

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to the intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary of Defense shall ensure that the intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter. The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.

(c) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary shall submit to the appropriate committees of Congress a report on all commercial activities authorized under this subchapter that were undertaken during the previous fiscal year. Such report shall include (with respect to the fiscal year covered by the report)—

(1) a description of any exercise of the authority provided by section 433(b) of this title;

(2) a description of any expenditure of funds made pursuant to this subchapter (whether from appropriated or non-appropriated funds); and

(3) a description of any actions taken with respect to audits conducted pursuant to section 432 of this title to implement recommendations or correct deficiencies identified in such audits.

(d) INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 440.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (b), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 432 of this title.

CHAPTER 22—MISCELLANEOUS STUDIES AND REPORTS

Sec.
451. Racial and ethnic issues; biennial survey; biennial report.

§451. Racial and ethnic issues; biennial survey; biennial report

(a) BIENNIAL SURVEY.—The Secretary of Defense shall carry out a biennial survey to measure the state of racial and ethnic issues and discrimination among members of the armed forces serving on active duty. The survey shall solicit information on the race relations climate in the armed forces, including—

(1) indicators of positive and negative trends of relations between all racial and ethnic groups;

(2) the effectiveness of Department of Defense policies designed to improve race and ethnic relations; and

(3) the effectiveness of current processes for complaints on and investigations into racial and ethnic discrimination.

(b) IMPLEMENTING ENTITY.—The Secretary shall carry out each biennial survey through the entity in the Department of Defense known as the Armed Forces Survey on Race/Ethnic Issues.

(c) REPORTS TO CONGRESS.—Upon completion of each biennial survey under subsection (a), the Secretary shall submit to Congress a report containing the results of the survey.

(Added Pub. L. 103–337, div. A, title V, § 554(a)(1), Oct. 5, 1994, 108 Stat. 2773.)

FIRST REPORT REQUIRED UNDER SUBSECTION (c)

Section 554(b) of Pub. L. 103–337 provided that: ''The Secretary of Defense shall submit the first report under section 451(c) of title 10, United States Code, as added by subsection (a), not later than May 1, 1995.''

PART II—PERSONNEL

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AMENDMENTS

1994—Pub. L. 103–359, title V, § 501(b)(2), Oct. 14, 1994, 108 Stat. 3429, substituted ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' for ''Defense Intelligence Agency Civilian Personnel'' in item for chapter 83.

1992—Pub. L. 102–484, div. A, title XIII, § 1322(a)(2), Oct. 23, 1992, 106 Stat. 2553, added item for chapter 89.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(26)(C)(ii), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993, struck out item for chapter 85 ''Procurement Management Personnel''.

Pub. L. 102–190, div. A, title XI, § 1112(b)(2), Dec. 5, 1991, 105 Stat. 1501, substituted ''Original Appointments of Regular Officers in Grades Above Warrant Officer Grades'' for ''Appointments in Regular Components'' in item for chapter 33 and added item for chapter 33A.

Pub. L. 102–25, title VII, § 701(e)(1), Apr. 6, 1991, 105 Stat. 114, added item for chapter 85.

1990—Pub. L. 101–510, div. A, title V, § 502(a)(2), title XII, § 1202(b), Nov. 5, 1990, 104 Stat. 1557, 1656, added items for chapters 58 and 87 and struck out item for chapter 85 ''Procurement Management Personnel''.

1988—Pub. L. 100–370, § 1(c)(3), July 19, 1988, 102 Stat. 841, added item for chapter 54.

1986—Pub. L. 99–433, title IV, § 401(b), Oct. 1, 1986, 100 Stat. 1030, added item for chapter 38.

1985—Pub. L. 99–145, title IX, § 924(a)(2), Nov. 8, 1985, 99 Stat. 698, added item for chapter 85.

1983—Pub. L. 98–94, tile IX, § 925(a)(2), title XII, § 1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted ''or'' for ''and'' in item for chapter 60.

1981—Pub. L. 97–89, title VII, § 701(a)(2), Dec. 4, 1981, 95 Stat. 1160, added item for chapter 83.

1980—Pub. L. 96–513, title V, §§ 501(1), 511(29), (54)(B), Dec. 12, 1980, 94 Stat. 2907, 2922, 2925, added item for chapter 32, substituted ''531'' for ''541'' as section number in item for chapter 33, substituted ''34'' for ''35'' as chapter number of chapter relating to appointments as reserve officers, added items for chapters 35 and 36, substituted ''Reserve Components: Standards and Procedures for Retention and Promotion'' for ''Retention of Reserves'' in item for chapter 51, added item for chapter 60, substituted ''1251'' for ''1255'' as section number in item for chapter 63, substituted ''Retirement of Warrant Officers'' for ''Retirement'' in item for chapter 65, substituted ''1370'' for ''1371'' as section number in item for chapter 69, and amended item for chapter 73 to read: ''Annuities Based on Retired or Retainer Pay''.

1972—Pub. L. 92–425, § 2, Sept. 21, 1972, 86 Stat. 711, amended item for chapter 73 by inserting ''; Survivor Benefit Plan'' after ''Pay'' which could not be executed as directed in view of amendment by Pub. L. 87–381. See 1961 Amendment note below.

1968—Pub. L. 90–377, § 2, July 5, 1968, 82 Stat. 288, added item for chapter 48.

1967—Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220, struck out item for chapter 80 ''Exemplary Rehabilitation Certificates''.

1966—Pub. L. 89–690, § 2, Oct. 15, 1966, 80 Stat. 1017, added item for chapter 80.

1962—Pub. L. 87–649, §3(2), Sept. 7, 1962, 76 Stat. 493, added item for chapter 40.

1961—Pub. L. 87–381, §1(2), Oct. 4, 1961, 75 Stat. 810, substituted ''Retired Servicemen's Family Protection Plan'' for ''Annuities Based on Retired or Retainer Pay'' in item for chapter 73.

1958—Pub. L. 85–861, §§1(21), (26), (33), 33(a)(4)(B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted ''General Service Requirements'' for ''Service Requirements for Reserves'' in item for chapter 37, ''971'' for ''[No present sections]'' in item for chapter 49, ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in item for chapter 55, and struck out ''Care of the Dead'' and substituted ''1475'' for ''1481'' in item for chapter 75.

CROSS REFERENCES

Particular provisions relating to personnel—
Coast Guard, see section 211 et seq. of Title 14, Coast Guard.
National Guard, see section 301 et seq. of Title 32, National Guard.
Naval Reserve and Marine Corps Reserve, see section 5441 et seq. of this title.

CHAPTER 31—ENLISTMENTS

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AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(3), Oct. 5, 1994, 108 Stat. 3013, struck out items 510 ''Reserve components: qualifications'', 511 ''Reserve components: terms'', 512 ''Reserve components: transfers'', and 517 ''Authorized daily average: members in pay grades E–8 and E–9''.

1989—Pub. L. 101–189, div. A, title V, §501(a)(2), Nov. 29, 1989, 103 Stat. 1435, added item 513.

1985—Pub. L. 99–145, title XIII, §1303(a)(4)(B), Nov. 8, 1985, 99 Stat. 738, substituted ''enlistment'' for ''enlistments'' in item 520b.

1984—Pub. L. 98–525, title XIV, §1401(a)(2), Oct. 19, 1984, 98 Stat. 2614, added item 520b.

1982—Pub. L. 97–252, title XI, §1114(b)(3), (c)(2), Sept. 8, 1982, 96 Stat. 749, 750, inserted ''; compilation of directory information'' in item 503, and added item 520a.

1980—Pub. L. 96–342, title III, §302(b)(2), Sept. 8, 1980, 94 Stat. 1083, added item 520.

1968—Pub. L. 90–623, §2(2), Oct. 22, 1968, 82 Stat. 1314, struck out ''or national emergency'' after ''extension of enlistments during war'' in item 506.

Pub. L. 90–235, §2(a)(1)(C), Jan. 2, 1968, 81 Stat. 755, redesignated item 501 as 502, and added items 501, 503 to 509, 518 and 519.

1962—Pub. L. 87–649, §2(2), Sept. 7, 1962, 76 Stat. 492, added item 517.

1958—Pub. L. 85–861, §1(9)(B), (C), Sept. 2, 1958, 72 Stat. 1440, struck out item 513 ''Reserve components: promotions'' and added item 516.

CROSS REFERENCES

Particular provisions relating to enlistments—
Air Force, see section 8251 et seq. of this title.
Army, see section 3251 et seq. of this title.
Coast Guard, see section 351 et seq. of Title 14, Coast Guard.
National Guard, see sections 302 to 304 and 313 of Title 32, National Guard.

§501. Definition

In this chapter ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 753.)

PRIOR PROVISIONS

A prior section 501 was renumbered 502 of this title.

§502. Enlistment oath: who may administer

Each person enlisting in an armed force shall take the following oath:

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

This oath may be taken before any commissioned officer of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, §501; Oct. 5, 1962, Pub. L. 87–751, §1, 76 Stat. 748; renumbered §502, Jan. 2, 1968, Pub. L. 90–235, §2(a)(1)(A), 81 Stat. 753; Nov. 29, 1989, Pub. L. 101–189, div. A, title VI, §653(a)(1), 103 Stat. 1462.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501	50:737.	May 5, 1950, ch. 169, §8, 64 Stat. 146.

The words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1. The words ''of any armed force'' are inserted in the last sentence, since they are necessarily implied by their use in the source statute.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the oath, is classified to chapter 47 (§801 et seq.) of this title.

AMENDMENTS

1989—Pub. L. 101–189 struck out ''or affirmation'' after ''This oath''.

[1] Editorialy supplied. Item 517 struck out by Pub. L. 103–337 without corresponding repeal of section 517.

1962—Pub. L. 87–751 substituted ''support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same'' for ''bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever'' and inserted ''So help me God'' in the oath, and ''or affirmation'' in text.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87–751 provided that: ''This Act [amending this section and section 304 of Title 32, National Guard] does not affect any oath taken before one year after its enactment [Oct. 5, 1962].''

CROSS REFERENCES

Authority to administer oath, see section 1031 of this title.

National Guard, enlistment oath, see section 304 of Title 32, National Guard.

''Oath'' as including affirmation, see section 1 of Title 1, General Provisions.

Uniform Code of Military Justice, see section 801 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12102 of this title.

§ 503. Enlistments: recruiting campaigns; compilation of directory information

(a) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(b)(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committees on Armed Services of the Senate and House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(7) In this subsection, ''directory information'' means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational agency or institution attended by the student.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 97–252, title XI, § 1114(b)(1), (2), Sept. 8, 1982, 96 Stat. 749.)

AMENDMENTS

1982—Pub. L. 97–252, § 1114(b)(2), inserted ''; compilation of directory information'' in section catchline.

Subsec. (a). Pub. L. 97–252, § 1114(b)(1)(A), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 97–252, § 1114(b)(1)(B), added subsec. (b).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

MILITARY RECRUITING ON CAMPUS

Pub. L. 103–337, div. A, title V, § 558, Oct. 5, 1994, 108 Stat. 2776, provided that:

''(a) DENIAL OF FUNDS.—(1) No funds available to the Department of Defense may be provided by grant or contract to any institution of higher education that has a policy of denying, or which effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes—

''(A) entry to campuses or access to students on campuses; or

''(B) access to directory information pertaining to students.

''(2) Students referred to in paragraph (1) are individuals who are 17 years of age or older.

''(b) PROCEDURES FOR DETERMINATION.—The Secretary of Defense, in consultation with the Secretary of Education, shall prescribe regulations that contain procedures for determining if and when an educational institution has denied or prevented access to students or information described in subsection (a).

''(c) DEFINITION.—For purposes of this section, the term 'directory information' means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by the student.''

MILITARY RECRUITING INFORMATION

Section 1114(a) of Pub. L. 97–252 provided that: ''The Congress finds that in order for Congress to carry out effectively its constitutional authority to raise and support armies, it is essential—

''(1) that the Secretary of Defense obtain and compile directory information pertaining to students enrolled in secondary schools throughout the United States; and

''(2) that such directory information be used only for military recruiting purposes and be retained in the case of each person with respect to whom such information is obtained and compiled for a limited period of time.''

ACCESS OF ARMED FORCES RECRUITING PERSONNEL TO SECONDARY EDUCATIONAL INSTITUTIONS; RELEASE OF DATA

Pub. L. 96–342, title III, § 302(d), Sept. 8, 1980, 94 Stat. 1083, provided that: ''It is the sense of the Congress—

''(1) that secondary educational institutions in the United States, the Commonwealth of Puerto Rico, and the territories of the United States should cooperate with the Armed Forces by allowing recruiting personnel access to such institutions; and

''(2) that it is appropriate for such institutions to release to the Armed Forces information regarding

students at such institutions (including such data as names, addresses, and education levels) which is relevant to recruiting individuals for service in the Armed Forces.''

§504. Persons not qualified

No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 802 of this title.

§505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than thirty-five years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than six years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be.

(d) The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of at least two but not more than six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 93–290, May 24, 1974, 88 Stat. 173; Pub. L. 95–485, title VIII, §820(a), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98–94, title X, §1023, Sept. 24, 1983, 97 Stat. 671.)

AMENDMENTS

1983—Subsecs. (c), (d). Pub. L. 98–94 substituted ''at least two but not more than six years'' for ''two, three, four, five, or six years''.

1978—Subsecs. (d), (e). Pub. L. 95–485 redesignated subsec. (e) as (d). Former subsec. (d), which provided that in the Regular Army female persons may be enlisted only in the Women's Army Corps, was struck out.

1974—Subsec. (a). Pub. L. 93–290, §1, struck out provisions which prohibited the Secretary from accepting original enlistments from female persons less than 18 years of age, and which required consent of the parent or guardian for an original enlistment of a female person under 21 years of age.

Subsec. (c). Pub. L. 93–290, §2, substituted provisions permitting the Secretary to accept original enlistments of persons for the duration of their minority or for a period of two, three, four, five, or six years, for provisions which limited the Secretary to accept original enlistments from male persons for the duration of their minority or for a period of two, three, four, five, or six years, and from female persons for a period of two, three, four, five, or six years.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 513, 519, 802 of this title.

§506. Regular components: extension of enlistments during war

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§507. Extension of enlistment for members needing medical care or hospitalization

(a) An enlisted member of an armed force on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment, or it is determined that recovery to that extent is impossible.

(b) This section does not prevent the retention in service, without his consent, of an enlisted member of an armed force under section 972 of this title.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§508. Reenlistment: qualifications

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard under any other provision of law.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§509. Voluntary extension of enlistments: periods and benefits

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment

of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharged from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 906.

[§ 510. Renumbered § 12102]

[§ 511. Renumbered § 12103]

[§ 512. Renumbered § 12104]

§ 513. Enlistments: Delayed Entry Program

(a) A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a regular component of an armed force may (except as provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve for a term of not less than six years nor more than eight years.

(b) Unless sooner ordered to active duty under chapter 39 of this title or another provision of law, a person enlisted under subsection (a) shall, within 365 days after such enlistment, be discharged from the reserve component in which enlisted and immediately be enlisted in the regular component of an armed force. During the period beginning on the date on which the person enlists under subsection (a) and ending on the date on which the person is enlisted in a regular component under the preceding sentence, the person shall be in the Ready Reserve of the armed force concerned.

(c) A person who is under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in clause (ii) or (iii) of section 6(c)(2)(A) of that Act, may not be enlisted under subsection (a).

(d) This section shall be carried out under regulations to be prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–189, div. A, title V, § 501(a)(1), Nov. 29, 1989, 103 Stat. 1435; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(2), Nov. 5, 1990, 104 Stat. 1719.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (c), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. Section 6 of the Act is classified to section 456 of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

PRIOR PROVISIONS

A prior section 513, act Aug. 10, 1956, ch. 1041, 70A Stat. 18, related to promotion of enlisted members of Reserve components, prior to repeal by Pub. L. 85–861, § 36B(1), Sept. 2, 1958, 72 Stat. 1570.

AMENDMENTS

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''subsection (a)'' for ''paragraph (1)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10147 of this title; title 37 section 205.

§ 514. Bounties prohibited; substitutes prohibited

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
514(a)	50 App.:458 (1st sentence, less applicability to induction).	June 24, 1948, ch. 625, § 8 (less applicability to induction), 62 Stat. 614.
514(b).	50 App.:458 (last sentence, less applicability to induction).	

In subsection (b), the words ''active duty'' are substituted for the words ''training and service''. The word ''may'' is substituted for the words ''shall be permitted or allowed''. The last sentence is substituted for 50 App.:458 (words between 1st and last semicolons). 50 App.:458 (words after last semicolon) is omitted as applicable only to induction.

CROSS REFERENCES

Bounties for induction and substitutes for training and service in an armed force prohibited, see section 458 of Appendix to Title 50, War and National Defense.

Clothing allowance for enlisted personnel, see section 418 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 308a.

§ 515. Reenlistment after discharge as warrant officer

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
515	10:600d (last 36 words of last sentence). 34:135d (last 36 words of last sentence). 10:600m (last 21 words of 3d sentence). 34:430a (last 21 words of 3d sentence).	May 29, 1954, ch. 249, §§6 (last 36 words of last sentence), 15 (last 21 words of 3d sentence), 68 Stat. 159, 164.

The first 20 words are inserted for clarity. The word ''request'' is substituted for the word ''application''.

CROSS REFERENCES

Enlistment instead of discharge of warrant officer on second failure of promotion, see section 580 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165, 1166 of this title.

§516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman

(a) The enlistment or period of obligated service of an enlisted member of the armed forces who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Naval Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Naval Reserve, to the compensation and emoluments of a midshipman in the Naval Reserve.

(b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Naval Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his enlisted status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service.

(Added Pub. L. 85–861, §1(9)(A), Sept. 2, 1958, 72 Stat. 1439.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
516(a) ..... 516(b)	50:1411. 50:1412.	June 25, 1956, ch. 439, §§1, 2, 70 Stat. 333.

In subsection (a), the words ''on or after June 25, 1956'' are omitted as executed. The words ''Regular, Reserve'' and ''during the continuation of the cadet or midshipman status of such member'' are omitted as surplusage. The words ''if he is a midshipman in the Naval Reserve * * * of a midshipman in the Naval Reserve'' are substituted for the words ''accruing to such reserve midshipman by virtue of his status in the Naval Reserve''.

In subsection (b), the words ''a person covered by subsection (a)'' are substituted for 50:1412 (1st 84 words of 1st sentence). The words ''his appointment as a commissioned officer of'' are substituted for the words ''the acceptance of a commission in''. The words ''and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged'' are substituted for 50:1412 (2d sentence). The words ''promoted or'' are omitted as unnecessary, since the only kind of promotion involved is that to officer, in which case the member is discharged from his enlisted status. The words ''as service under that enlistment'' are substituted for the words ''as time serviced under such contract''.

§517. Authorized daily average: members in pay grades E–8 and E–9

(a) Except as provided in section 307 of title 37, the authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 in a calendar year may not be more than 2 percent (or, in the case of the Army, 2.5 percent) and 1 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on January 1 of that year. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.

(b) Whenever the number of members serving in pay grade E–9 is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.

(Added Pub. L. 87–649, §2(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–584, §4, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97–86, title V, §503(1), (2), Dec. 1, 1981, 95 Stat. 1107, 1108; Pub. L. 97–252, title V, §503(a), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98–94, title V, §503(a), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98–525, title IV, §§413(a), 414(a)(2), Oct. 19, 1984, 98 Stat. 2517, 2518; Pub. L. 99–145, title IV, §413(a), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100–180, div. A, title IV, §413(a), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101–189, div. A, title IV, §413(a), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102–190, div. A, title IV, §413(a), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103–160, div. A, title IV, §413(a), Nov. 30, 1993, 107 Stat. 1642; Pub. L. 103–337, div. A, title V, §552(a), title XVI, §1662(a)(4), Oct. 5, 1994, 108 Stat. 2772, 2988.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
517	37:232(c) (last sentence).	Oct. 12, 1949, ch. 681, §201(c) (last sentence); added May 20, 1958, Pub. L. 85–422, §1(3) (last sentence), 72 Stat. 124.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §552(a), inserted ''(or, in the case of the Army, 2.5 percent)'' after ''may not be more than 2 percent''.

Subsec. (b). Pub. L. 103–337, §1661(a)(4)(B), redesignated subsec. (c) as (b) and struck out ''or whenever the

number of members serving in pay grade E–9 for duty described in subsection (b) is less than the number authorized for that grade under subsection (b),'' after ''under subsection (a),''.

Pub. L. 103–337, § 1662(a)(4)(A), struck out subsec. (b) which limited the number of enlisted members in pay grades E–8 and E–9 who could be on active duty (other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard.

Subsec. (c). Pub. L. 103–337, § 1662(a)(4)(B), redesignated subsec. (c) as (b).

1993—Subsec. (b). Pub. L. 103–160, in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the Air Force to 328 and 840 from 279 and 800, respectively.

1991—Subsec. (b). Pub. L. 102–190, in table, increased fiscal year limitation on number of enlisted men in pay grade E–8 on active duty affecting reserve components of the Air Force from 670 to 800, and increased limitation on number of enlisted men in pay grade E–9 on active duty affecting reserve components of the Army from 557 to 569, the Air Force from 231 to 279, and the Marine Corps from 13 to 14.

1989—Subsec. (b). Pub. L. 101–189, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 557 and 2,585 from 542 and 2,504, respectively; Navy, to 202 and 429 from 200 and 425, respectively; Air Force, to 231 and 670 from 224 and 637, respectively. Marine Corps figures remained unchanged.

Pub. L. 101–189, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 542 and 2,504 from 529 and 2,350, respectively; Navy, to 200 and 425 from 180 and 400, respectively; Air Force, to 224 and 637 from 150 and 425, respectively. Marine Corps figures remained unchanged.

1987—Subsec. (b). Pub. L. 100–180, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 529 and 2,350 from 517 and 2,295, respectively; Navy, to 180 and 400 from 175 and 390, respectively; Air Force, to 150 and 425 from 125 and 425, respectively. Marine Corps figures remained unchanged.

Pub. L. 100–180, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 175 and 390 from 165 and 381, respectively; Air Force, to 125 and 425 from 80 and 358, respectively; Marine Corps, to 13 and 74 from 9 and 74, respectively. Army figures remained unchanged.

1985—Subsec. (b). Pub. L. 99–145 in table, changed fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 165 and 381 from 156 and 381, respectively; Air Force, to 80 and 358 from 87 and 455, respectively. Army and Marine Corps figures remained unchanged.

1984—Subsec. (b). Pub. L. 98–525, § 414(a)(2), inserted ''(other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training)'' and substituted ''or the National Guard'' for ''of the armed forces'' and ''for that grade and armed force'' for ''prescribed for the grade and the armed force''.

Pub. L. 98–525, § 413(a), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 2,295 and 517 from 1,494 and 314; Air Force, to 455 and 87 from 617 and 143; Marine Corps, to 74 and 9 from 56 and 6. Navy figures remained unchanged.

1983—Subsec. (b). Pub. L. 98–94 increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 1,494 and 314 from 1,244 and 265; Navy, to 381 and 156 from 329 and 156; Air Force, to 617 and 143 from 441 and 132; Marine Corps figures remained unchanged.

1982—Subsec. (b). Pub. L. 97–252 increased the numbers in columns from 222, 146, 76, and 4 in the line for E–9 to 265, 156, 132, and 6, respectively, and from 908, 319, 307, and 12 in line for E–8 to 1,244, 329, 441, and 56, respectively.

1981—Subsec. (b). Pub. L. 97–86, § 503(1), inserted column for ''Marine Corps'' in table and increased numbers in existing columns headed ''Army'', ''Navy'', and ''Air Force'' from 209, 140, and 71 in line for E–9 to 222, 146, and 76, respectively, and from 823, 302, and 302 in line for E–8 to 908, 319, and 307, respectively.

Subsec. (c). Pub. L. 97–86, § 503(2), added subsec. (c).

1980—Pub. L. 96–584 designated existing provisions as subsec. (a), inserted provisions respecting computation of limitations, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 552(c) of Pub. L. 103–337 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to the number of enlisted members of the Army on active duty in pay grade E–8 during 1994.''

Amendment by section 1662(a)(4) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 413(a)(2) of Pub. L. 101–189 provided that the amendment made by that section is effective Oct. 1, 1990.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 413(a)(2) of Pub. L. 100–180 provided that the amendment made by that section is effective Oct. 1, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 413(c) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 413(c) of Pub. L. 98–525 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 503(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1983.''

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

AUTHORIZED ACTIVE DUTY STRENGTHS FOR ARMY ENLISTED MEMBERS IN PAY GRADE E–8; SPECIAL RULE FOR 1995

Section 552(b) of Pub. L. 103–337 provided that: ''The percentage applicable to enlisted members of the Army in pay grade E–8 under section 517(a) of title 10, United States Code, during 1995 shall be 2.3 percent (rather

than the percentage provided by the amendment made by subsection (a) [amending this section]).''

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of this section and section 523, 524 (now 12011), 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in section 527 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 112.

§518. Temporary enlistments

Temporary enlistments may be made only in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, without specification of component.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1172 of this title.

§519. Temporary enlistments: during war or emergency

Except as provided in section 505 of this title and except for enlistments as Reserves of an armed force—

(1) temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months; and

(2) only persons at least eighteen years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level

(a) The number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in any armed force during any fiscal year whose score on the Armed Forces Qualification Test is at or above the tenth percentile and below the thirty-first percentile may not exceed 20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force during such fiscal year.

(b) A person who is not a high school graduate may not be accepted for enlistment in the armed forces unless the score of that person on the Armed Forces Qualification Test is at or above the thirty-first percentile; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements.

(Added Pub. L. 96–342, title III, §302(b)(1), Sept. 8, 1980, 94 Stat. 1082; amended Pub. L. 96–579, §9, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–86, title IV, §402(b)(1), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 98–94, title XII, §1268(3), Sept. 24, 1983, 97 Stat. 705; Pub. L. 100–370, §1(a)(1), July 19, 1988, 102 Stat. 840.)

HISTORICAL AND REVISION NOTES

1988 ACT

Amendment of subsection (b) is based on Pub. L. 93–307, title IV, §401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, §705, Aug. 5, 1974, 88 Stat. 406.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–370 inserted before period at end ''; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements''.

1983—Subsec. (a). Pub. L. 98–94 struck out provisions under which, for fiscal years beginning on October 1, 1980, and October 1, 1981, the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in the armed forces during such fiscal years whose score on the Armed Forces Qualification Test was at or above the tenth percentile and below the thirty-first percentile could not exceed 25 percent of the number of such persons enlisted or inducted into the armed forces during such fiscal years, and, in the provisions remaining applicable to fiscal years beginning after Sept. 30, 1982, substituted ''20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force'' for ''20 percent of the number of such persons enlisted or inducted into such armed force''.

1981—Pub. L. 97–86 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–579 struck out subsec. (a) designation and subsec. (b) authorizing the Secretary of Defense for national security reasons to waive the enlistment and induction limitation based on percentile limits conditioned upon notification of the Congress and a concurrent resolution of approval.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 402(b)(2) of Pub. L. 97–86 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981].''

MAXIMUM NUMBER OF ARMY ENLISTEES AND INDUCTEES WHO ARE NOT HIGH SCHOOL GRADUATES

Section 302(a) of Pub. L. 96–342, as amended by Pub. L. 97–86, title IV, §402(a), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 97–252, title IV, §403, Sept. 8, 1982, 96 Stat. 725; Pub. L. 98–94, title IV, §402, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98–525, title IV, §402, Oct. 19, 1984, 98 Stat. 2516; Pub. L. 99–145, title IV, §402, Nov. 8, 1985, 99 Stat. 618, provided that: ''The number of male individuals (with no prior military service) enlisted or inducted into the Army during the fiscal year beginning on October 1, 1985, who are not high school graduates may not exceed, as of September 30, 1986, 35 percent of all male individuals (with no prior military service) enlisted or inducted into the Army during such fiscal year.''

[Section 402 of Pub. L. 99–145 provided that amendment of this note by Pub. L. 99–145 is effective Oct. 1, 1985.]

[Section 402 of Pub. L. 98–525 provided that amendment of this note by Pub. L. 98–525 is effective Oct. 1, 1984.]

[Section 402 of Pub. L. 98–94 provided that amendment of this note by Pub. L. 98–94 is effective Oct. 1, 1983.]

[Section 403 of Pub. L. 97–252 provided that amendment of this note by Pub. L. 97–252 is effective Oct. 1, 1982.]

DENIAL OF ENLISTMENT FOR LACK OF HIGH SCHOOL DIPLOMA PROHIBITED

Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406, which provided that no volunteer for enlistment into the Armed Forces shall be denied enlistment solely because of his not having a high school diploma when his enlistment is needed to meet established strength requirements, was repealed and restated in sections 520(b) and 3262 of this title by Pub. L. 100–370, § 1(a), July 19, 1988, 102 Stat. 840.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3262 of this title.

§ 520a. Criminal history information for military recruiting purposes

(a) Each State and each unit of general local government of a State is requested to make available, upon request, to the Secretary concerned any criminal history information maintained by or available to such State or unit of general local government which pertains to any person who, within 90 days before the date on which such information was requested (1) has applied for enlistment in the armed forces, or (2) has applied, in connection with such person's application for enlistment, for participation in a program of the armed forces which requires a determination of the trustworthiness of persons who participate in such program.

(b) In this section, ''criminal history information'' means the following information with respect to any juvenile or adult arrest, citation, or conviction of any person referred to in subsection (a):

(1) The offense involved.

(2) The age of the person with respect to whom such information pertains.

(3) The dates of the arrest, citation, and conviction, if any.

(4) The place the offense was alleged to have been committed, the place of the arrest, and the court to which the case was assigned.

(5) The disposition of the case.

(c) Criminal history information received under this section shall be confidential, and a person who has had access to any information received under this section may not disclose such information except to facilitate military recruiting.

(d) The Secretaries concerned shall prescribe regulations, which shall be as uniform as practicable, to carry out this section. Regulations prescribed under this section shall be submitted to the Committees on Armed Services of the Senate and House of Representatives.

(Added Pub. L. 97–252, title XI, § 1114(c)(1), Sept. 8, 1982, 96 Stat. 749.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 520b. Applicants for enlistment: authority to use funds for the issue of authorized articles

Funds appropriated to the Department of Defense may be used for the issue of authorized articles to applicants for enlistment.

(Added Pub. L. 98–525, title XIV, § 1401(a)(1), Oct. 19, 1984, 98 Stat. 2614; amended Pub. L. 99–145, title XIII, § 1303(a)(4)(A), Nov. 8, 1985, 99 Stat. 738.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.

Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.

Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.

Aug. 17, 1961, Pub. L. 87–144, title II, § 201, 75 Stat. 367, 369.

July 7, 1960, Pub. L. 86–601, title II, § 201, 74 Stat. 340, 342.

Aug. 18, 1959, Pub. L. 86–166, title II, § 201, 73 Stat. 368, 370.

Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 714, 721.

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 314, 321.

July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 457, 464.

July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 304, 312.

June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 347.

Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 348.

July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 520, 530.

Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 429, 443.

Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 735, 750.

Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 992, 1015.

June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 557.
July 16, 1946, ch. 583, §1, 60 Stat. 547, 548.
July 3, 1945, ch. 265, §1, 59 Stat. 390.
June 28, 1944, ch. 303, §1, 58 Stat. 580.
July 1, 1943, ch. 185, §1, 57 Stat. 354.
July 2, 1942, ch. 477, §1, 56 Stat. 617.
June 30, 1941, ch. 262, §1, 55 Stat. 373.
June 13, 1940, ch. 343, §1, 54 Stat. 358, 359.
Apr. 26, 1939, ch. 88, §1, 53 Stat. 600.
June 11, 1938, ch. 37, §1, 52 Stat. 649.
July 1, 1937, ch. 423, §1, 50 Stat. 450.
May 15, 1936, ch. 404, §1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 128.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 621.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 670, 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1283, 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''enlistment'' for ''enlistments''.

EFFECTIVE DATE

Section 1404 of Pub. L. 98–525 provided that: ''The amendments made by sections 1401 [enacting this section and sections 956, 979 to 981, 1047 to 1050, 1074b [now 1074c], 1093, 1589, 2007 to 2009, 2484, 2638, and 2639 of this title, amending sections 1074, 1077, 1079, 2104, and 7204 of this title, and repealing section 7208 of this title], 1402 [enacting section 306a of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 206 and 404 of Title 37], and 1403 [amending provisions set out as a note under section 138 of this title and repealing provisions set out as notes under sections 138 and 2102 of this title] take effect on October 1, 1985.''

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.
521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.
522. Authorized total strengths: regular commissioned officers on active duty.
523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.
[524. Renumbered.]
525. Distribution of commissioned officers on active duty in general officer and flag officer grades.
526. Authorized strength: general and flag officers on active duty.
527. Authority to suspend sections 523, 525, and 526.
528. Limitation on number of officers on active duty in grades of general and admiral.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IV, §405(b)(2), title XVI, §1671(b)(4), Oct. 5, 1994, 108 Stat. 2745, 3013, struck out item 524 ''Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain'', struck out ''524,'' after ''523,'' in item 527, and added item 528.

1988—Pub. L. 100–370, §1(b)(3), July 19, 1988, 102 Stat. 840, struck out former item 526 ''Authority to suspend sections 523, 524, and 525'', and added items 526 and 527.

1984—Pub. L. 98–525, title IV, §414(a)(4)(B)(ii), inserted references to the National Guard and to full-time National Guard duty in item 524.

§521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories

(a) Whenever the needs of the services require, but at least once each fiscal year, the Secretary of Defense shall prescribe the total authorized active-duty strength as of the end of the fiscal year for officers in grades above chief warrant officer, W–5, for each of the armed forces under the jurisdiction of the Secretary of a military department.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of each military department may, for an armed force under his jurisdiction, prescribe the strength of any category of officers that may serve on active duty.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 102–190, div. A, title XI, §1131(1)(A), Dec. 5, 1991, 105 Stat. 1505.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1132 of title XI of Pub. L. 102–190 provided that: ''This title [enacting sections 571 to 583 and 742 of this title, amending this section, sections 522, 597 [now 12241], 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under sections 555 and 571 of this title and section 1009 of Title 37] and the amendments made by this title shall take effect on February 1, 1992.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

EVALUATION OF EFFECTS OF OFFICER STRENGTH REDUCTIONS ON OFFICER PERSONNEL MANAGEMENT SYSTEMS

Pub. L. 102–484, div. A, title V, §502, Oct. 23, 1992, 106 Stat. 2402, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall provide for a federally funded research and development center that is independent of the military departments to review the officer personnel management system of each of the military departments and to determine and evaluate the effects of the post-Cold War officer strength reductions on that officer personnel management system.

''(b) MATTERS TO BE CONSIDERED.—The review and evaluation shall include, for the officer personnel man-

agement system of each military department, the effects of the officer strength reductions on the following:

''(1) The timing and opportunities for officer promotions.

''(2) The expected lengths of officer careers.

''(3) Other features of the officer personnel management system under the Defense Officer Personnel Management Act (Public Law 96–513) [see Tables for classification], including the provisions of law added and amended by that Act.

''(4) Any other aspect of the officer personnel management system that the federally funded research and development center personnel conducting the review and evaluation consider appropriate or as directed by the Secretary of Defense.

''(c) REPORT.—Not later than December 31, 1993, the federally funded research and development center shall submit to the Secretary of Defense a report on the results of the review and evaluation. Within 60 days after receiving the report, the Secretary shall transmit the report to the Committees on Armed Services of the Senate and House of Representatives. The Secretary may submit to such committees any comments that the Secretary considers appropriate regarding the matters contained in the report.

''(d) FUNDING.—Funds appropriated for fiscal year 1993 pursuant to title II [106 Stat. 2349, see Tables for classification] and made available for federally funded research and development centers shall be available for the conduct of the review and evaluation under this section.''

STRENGTH OF ACTIVE DUTY OFFICER CORPS

Pub. L. 100–456, div. A, title IV, § 402(c), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(1) The number of officers serving on active duty (excluding officers in categories specified in paragraph (2)) as of September 30, 1990, may not exceed—

''(A) in the case of the Army, 106,427; and

''(B) in the case of the Air Force, 102,438.

''(2) Officers in the categories described in section 403(b) of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661, set out below] shall be excluded in counting officers under this subsection.''

Pub. L. 100–180, div. A, title IV, § 402, Dec. 4, 1987, 101 Stat. 1081, as amended by Pub. L. 100–456, div. A, title IV, § 402(b), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(a) AUTHORITY TO INCREASE FOR FISCAL YEAR 1988.—Subject to subsection (b), the Secretary of Defense may increase by not more than 1 percentage point (to not more than 98 percent) the percentage limitation prescribed in section 403(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3859) [set out below] applicable to the total number of commissioned officers of the Army, Navy, Air Force, and Marine Corps that may be serving on active duty as of September 30, 1988.

''(b) CERTIFICATION AND REPORT.—The Secretary may exercise the authority under subsection (a) only if—

''(1) the Secretary makes a determination that such increase is necessary in order to avoid severe personnel management problems in the Army, Navy, Air Force, and Marine Corps during fiscal year 1988 and certifies such determination to the Committees on Armed Services of the Senate and the House of Representatives; and

''(2) the Secretary submits to those Committees with such certification a report providing legislative recommendations for temporary changes in chapter 36 of title 10, United States Code, and other provisions of law enacted by the Defense Officer Personnel Management Act (Public Law 96–513) [see Tables for classification] that the Secretary considers necessary in order to implement the required officer reductions under such section 403 [set out below] with the least possible adverse effect on the Armed Forces.''

Pub. L. 99–661, div. A, title IV, § 403, Nov. 14, 1986, 100 Stat. 3859, as amended by Pub. L. 100–456, div. A, title IV, § 402(a), Sept. 29, 1988, 102 Stat. 1963; Pub. L. 101–189, div. A, title VI, § 653(e)(2), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 103–337, div. A, title XVI, § 1677(e), Oct. 5, 1994, 108 Stat. 3020, provided that:

''(a) REDUCTION IN SIZE OF OFFICER CORPS.—On and after each of the dates set forth in column 1 of the following table, the total number of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps (excluding officers in categories specified in subsection (b)) may not exceed the percentage, set forth in column 2 opposite such date, of the total number of commissioned officers serving on active duty as of September 30, 1986 (excluding officers in categories specified in subsection (b)):

Column 1	Column 2
On and after:	Percentage of total commissioned officers serving on active duty as of September 30, 1986:
September 30, 1987	99
September 30, 1988	97

''(b) EXCLUSIONS.—In computing the authorized strength of commissioned officers under subsection (a), officers in the following categories shall be excluded:

''(1) Reserve officers—

''(A) on active duty for training;

''(B) on active duty under section 10148(a), 10211, 10302 through 10305, 12301(a), or 12402 of title 10, United States Code, or under section 708 of title 32, United States Code;

''(C) on active duty under section 12301(d) of title 10, United States Code, in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard;

''(D) on active duty to pursue special work;

''(E) ordered to active duty under section 12304 of title 10, United States Code; or

''(F) on full-time National Guard duty.

''(2) Retired officers on active duty under a call or order to active duty for 180 days or less.

''(3) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

''(c) APPORTIONMENT OF REDUCTIONS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall apportion the reductions in the number of commissioned officers serving on active duty required by subsection (a) among the Army, Navy, Air Force, and Marine Corps. Not later than February 1 of each fiscal year in which reductions are required under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on the manner in which the reductions have been or are to be apportioned for that fiscal year and for the next fiscal year for which such reductions are required.''

§ 522. Authorized total strengths: regular commissioned officers on active duty

The authorized strengths of the Army, Navy, Air Force, and Marine Corps in regular officers (other than retired officers) in grades above chief warrant officer, W–5, are as follows:

Army.....63,000
Navy.....55,000
Air Force.....80,000
Marine Corps.....17,000

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 98–525, title V, § 522, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 102–190, div. A, title XI, § 1131(1)(B), Dec. 5, 1991, 105 Stat. 1505.)

AMENDMENTS

1991—Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''chief warrant officer (W–4)''.

1984—Pub. L. 98–525 increased number limit for regular officers in the Navy, Air Force, and Marine Corps to 55,000, 80,000, and 17,000 from 48,000, 69,425, and 13,000, respectively. The number limit for the Army remained unchanged.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

§523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in the grade of:		
	Major	Lieutenant colonel	Colonel
Army:			
60,000	11,580	7,941	3,080
65,000	12,271	8,330	3,264
70,000	12,963	8,718	3,447
75,000	13,654	9,107	3,631
80,000	14,346	9,495	3,814
85,000	15,037	9,884	3,997
90,000	15,729	10,272	4,181
95,000	16,420	10,661	4,364
100,000	17,112	11,049	4,548
110,000	18,495	11,826	4,915
120,000	19,878	12,603	5,281
130,000	21,261	13,380	5,648
170,000	26,793	16,488	7,116
Air Force:			
70,000	13,530	9,428	3,392
75,000	14,266	9,801	3,573
80,000	15,002	10,175	3,754
85,000	15,738	10,549	3,935
90,000	16,474	10,923	4,115
95,000	17,210	11,297	4,296
100,000	17,946	11,671	4,477
105,000	18,682	12,045	4,658
110,000	19,418	12,418	4,838
115,000	20,154	12,792	5,019
120,000	20,890	13,165	5,200
125,000	21,626	13,539	5,381
Marine Corps:			
12,500	2,499	1,388	592
15,000	2,766	1,483	613
17,500	3,085	1,579	633
20,000	3,404	1,674	654
22,500	3,723	1,770	675
25,000	4,042	1,865	695

(2) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Navy at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of lieutenant commander, commander, and captain may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Lieutenant commander	Commander	Captain
Navy:			
45,000	9,124	5,776	2,501
48,000	9,565	5,984	2,602
51,000	10,006	6,190	2,702
54,000	10,447	6,398	2,803
57,000	10,888	6,606	2,904
60,000	11,329	6,813	3,005
63,000	11,770	7,020	3,106
66,000	12,211	7,227	3,206
70,000	12,799	7,504	3,341
90,000	15,739	8,886	4,013

(3) If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is between any two consecutive figures listed in the first column of the appropriate table in paragraph (1) or (2), the corresponding authorized strengths for each of the grades shown in that table for that armed force are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is greater or less than the figures listed in the first column of the appropriate table in paragraph (1) or (2), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table in the same proportion as reflected in the nearest limit shown in the table.

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32;

(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 12304 of this title; or

(F) on full-time National Guard duty.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(c) Whenever the number of officers serving in any grade is less than the number authorized for

that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) An officer may not be reduced in grade, or have his pay or allowances reduced, because of a reduction in the number of commissioned officers authorized for his grade under this section.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2842; amended Pub. L. 98–525, title IV, § 414(a)(3), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99–145, title V, § 511(a), Nov. 8, 1985, 99 Stat. 623; Pub. L. 99–433, title V, § 531(a)(1), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 102–190, div. A, title IV, § 431, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–337, div. A, title XVI, § 1673(c)(3), Oct. 5, 1994, 108 Stat. 3014.)

AMENDMENTS

1994—Subsec. (b)(1)(B). Pub. L. 103–337, § 1671(c)(3)(A), substituted ''10211, 10302 through 10305, or 12402'' for ''265, 3021, 3496, 5251, 5252, 8021, or 8496''.

Subsec. (b)(1)(C). Pub. L. 103–337, § 1671(c)(3)(B), substituted ''12301(d)'' for ''672(d)''.

Subsec. (b)(1)(E). Pub. L. 103–337, § 1671(c)(3)(C), substituted ''12304'' for ''673b''.

1991—Subsec. (a)(1). Pub. L. 102–190, in table, decreased numbers of officers authorized to serve on active duty in the Air Force in the grade of Colonel to 3,392, 3,573, 3,754, 3,935, 4,115, 4,296, 4,477, 4,658, 4,838, 5,019, 5,200, and 5,381 from 3,642, 3,823, 4,004, 4,185, 4,365, 4,546, 4,727, 4,908, 5,088, 5,269, 5,450, and 5,631, respectively.

1986—Subsec. (b)(1)(B). Pub. L. 99–433 substituted ''3021'' and ''8021'' for ''3033'' and ''8033'', respectively.

1985—Subsec. (a)(1). Pub. L. 99–145 increased fiscal year limitation on authorized number of Marine Corps majors to 2,766, 3,085, 3,404, 3,723, and 4,042 from 2,717, 2,936, 3,154, 3,373, and 3,591, respectively.

1984—Subsec. (b)(1)(C). Pub. L. 98–525, § 414(a)(3)(A), struck out ''or section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Subsec. (b)(1)(F). Pub. L. 98–525, § 414(a)(3)(B)–(D), added subpar. (F).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 511(b) of Pub. L. 99–145 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985.''

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR ARMY MAJORS AND LIEUTENANT COLONELS

Section 402 of Pub. L. 103–337 provided that:

''(a) VARIATION AUTHORIZED.—In the administration of the limitation under section 523(a)(1) of title 10, United States Code, for fiscal years 1995 through 1997, the numbers applicable to officers of the Army serving on active duty in the grades of major and lieutenant colonel shall be the numbers set forth for that fiscal year in subsection (b) (rather than the numbers determined in accordance with the table in that section).

''(b) NUMBERS FOR FISCAL YEARS 1995 THROUGH 1997.—The numbers referred to in subsection (a) are as follows:

''Fiscal year:	Number of officers who may be serving on active duty in the grade of:	
	Major	Lieutenant colonel
1995	12,603	8,506
1996	12,870	8,646
1997	12,870	8,646.''

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR MARINE CORPS MAJORS AND LIEUTENANT COLONELS

Pub. L. 103–160, div. A, title IV, § 402, Nov. 30, 1993, 107 Stat. 1639, as amended by Pub. L. 103–337, div. A, title IV, § 403, Oct. 5, 1994, 108 Stat. 2743, provided that:

''(a) VARIATION AUTHORIZED.—In the administration of the limitation under section 523(a)(1) of title 10, United States Code, for fiscal years 1994 through 1997, the numbers applicable to officers of the Marine Corps serving on active duty in the grades of major and lieutenant colonel shall be the numbers set forth for that fiscal year in subsection (b) (rather than the numbers determined in accordance with the table in that section).

''(b) NUMBERS FOR FISCAL YEARS 1994 THROUGH 1997.—The numbers referred to in subsection (a) are as follows:

''Fiscal year:	Number of officers who may be serving on active duty in the grade of:	
	Major	Lieutenant colonel
1994	3,023	1,578
1995	3,157	1,634
1996	3,157	1,634
1997	3,157	1,634.''

TEMPORARY INCREASE IN OFFICER GRADE LIMITATIONS

Pub. L. 101–189, div. A, title IV, § 403, Nov. 29, 1989, 103 Stat. 1431, authorized the Secretary of Defense, until Sept. 30, 1991, to increase the strength-in-grade limitations specified in subsec. (a) of this section by a total of 250 positions, to be distributed among grades and services as the Secretary considers appropriate and directed the Secretary to submit to Congress a comprehensive report on the adequacy of the strength-in-grade limitations prescribed in subsec. (a) of this section.

TEMPORARY REDUCTION IN NUMBER OF AIR FORCE COLONELS

Pub. L. 101–189, div. A, title IV, § 402, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, § 404, Nov. 5, 1990, 104 Stat. 1545, provided that the number of officers authorized under subsec. (a) of this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1992 was reduced by 250.

Pub. L. 100–456, div. A, title IV, § 403, Sept. 29, 1988, 102 Stat. 1963, provided that: ''The number of officers that (but for this section) would be authorized under section 523 of title 10, United States Code, and other applicable provisions of law to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1989 is hereby reduced by 125, and the number of such officers that (but for this section) would be so authorized to be serving on active duty during fiscal year 1990 is hereby reduced by 250.''

CEILINGS ON COMMISSIONED OFFICERS ON ACTIVE DUTY

Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov.

9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, §1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, §602, Dec. 1, 1981, 95 Stat. 1110, which provided that after Oct. 1, 1981, the total number of commissioned officers on active duty in the Army, Air Force, and Marine Corps above the grade of colonel, and on active duty in the Navy above the grade of captain, could not exceed 1,073, and that in time of war, or of national emergency declared by Congress, the President could suspend the operation of this provision, was repealed and restated in section 526 of this title by Pub. L. 100–370, §1(b)(1)(B), (4).

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions increasing for the fiscal year ending on Sept. 30, 1981, the maximum number of officers authorized by this section to be serving on active duty, see section 627 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 115a, 527, 623, 3380, 5721, 8380, 12011 of this title.

[§524. Renumbered §12011]

§525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) No appointment may be made in a grade above brigadier general in the Army, Air Force, or Marine Corps if that appointment would result in more than 50 percent of the general officers of that armed force on active duty being in grades above brigadier general. No appointment may be made in a grade above rear admiral (lower half) in the Navy if that appointment would result in more than 50 percent of the flag officers of the Navy on active duty being in grades above rear admiral (lower half).

(b)(1) No appointment may be made in a grade above major general in the Army, Air Force, or Marine Corps if that appointment would result in more than 15 percent of the general officers of that armed force on active duty being in grades above major general. In the case of the Army and Air Force, of the 15 percent of general officers on active duty who may be serving in grades above major general, not more than 25 percent may be serving in the grade of general.

(2) No appointment may be made in a grade above rear admiral in the Navy if that appointment would result in more than 15 percent of the flag officers of the Navy on active duty being in grades above rear admiral. Of the 15 percent of flag officers on active duty who may be serving in grades above rear admiral, not more than 25 percent may be serving in the grade of admiral.

(3) An officer while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff or as Chief of Staff to the President, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for his armed force for that grade under paragraph (1) or (2).

(4)(A) An officer while serving in a position designated under subparagraph (B), if serving in the grade of lieutenant general or vice admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for that grade under paragraph (1) or (2).

(B) The President, with the advice and assistance of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, may designate not more than six positions within the Joint Staff (provided for under section 155 of this title) as positions referred to in subparagraph (A). The authority of the President under the preceding sentence may not be delegated.

(5)(A) An officer while serving in a position specified in section 604(b) of this title, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral, as the case may be, under the first sentence of paragraph (1) or (2), as applicable.

(B) Subparagraph (A) does not apply in the case of an officer serving in such a position if the Secretary of Defense, when considering officers for recommendation to the President for appointment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that appointment from each Secretary of a military department who (pursuant to section 604(a) of this title) was required to make such a recommendation.

(C) This paragraph shall cease to be effective at the end of September 30, 1997.

(c)(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, and Marine Corps in the grade of lieutenant general and in the Army and Air Force in the grade of general in excess of the applicable numbers determined under subsection (b)(1), and may make appointments in the Marine Corps in the grade of general in addition to the Commandant and Assistant Commandant, if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under subsection (b)(2) if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each appointment made under the authority of paragraph (1) in the Army, Air Force, or Marine Corps in the grade of lieutenant general or general or in the Navy in the grade of vice admiral or admiral, the number of appointments that may be made in the equivalent grade in one of the other armed forces (other than the Coast Guard) shall be reduced by one. When such an appointment is made, the President shall specify the armed force in which the reduction required by this paragraph is to be made.

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 10 percent of the total number of officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps under subsection (b).

(B) The number of officers that may be serving on active duty in the grades of general and admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 15 percent of the total number of general officers and flag officers that may be

serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps.

(4) Upon the termination of the appointment of an officer in the grade of lieutenant general or vice admiral or general or admiral that was made in connection with an increase under paragraph (1) in the number of officers that may be serving on active duty in that armed force in that grade, the reduction made under paragraph (2) in the number of appointments permitted in such grade in another armed force by reason of that increase shall no longer be in effect.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2844; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title II, § 202(a), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title V, § 511(a), Dec. 4, 1987, 101 Stat. 1088; Pub. L. 101–510, div. A, title IV, § 405, Nov. 5, 1990, 104 Stat. 1546; Pub. L. 103–337, div. A, title IV, § 405(a), Oct. 5, 1994, 108 Stat. 2744.)

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103–337 added par. (5).

1990—Subsec. (b)(3). Pub. L. 101–510, § 405(b), substituted ''that would otherwise be permitted for'' for ''authorized''.

Subsec. (b)(4). Pub. L. 101–510, § 405(a), added par. (4).

1987—Pub. L. 100–180 added subsec. (c).

1986—Subsec. (b)(3). Pub. L. 99–433 inserted ''or Vice Chairman''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in two places.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in two places.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SAVINGS PROVISION

Section 511(b) of Pub. L. 100–180 provided that: ''An officer of the Armed Forces on active duty holding an appointment in the grade of lieutenant general or vice admiral or general or admiral on September 30, 1987, shall not have that appointment terminated by reason of the numerical limitations determined under section 525(b) of title 10, United States Code. In the case of an officer of the Marine Corps serving in the grade of general by reason of an appointment authorized by section 511(3) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3869) [see below], that appointment shall not be terminated except as provided in section 601 of title 10, United States Code.''

REPORT ON MANAGEMENT OF SENIOR GENERAL AND FLAG OFFICER POSITIONS

Section 405(d) of Pub. L. 103–337 provided that: ''Not later than March 1, 1996, the Secretary of Defense shall submit to Congress a report on the implementation of the amendments made by this section [enacting sections 528 and 604 of this title and amending this section]. The report shall include an assessment of the effectiveness of those amendments in meeting the objective of encouraging more competition among all services for appointment of officers to joint three-star and four-star positions. The report may include such additional recommendations concerning general and flag officer selection policy as the Secretary considers appropriate.''

TEMPORARY EXCLUSION OF SUPERINTENDENT OF NAVAL ACADEMY FROM COUNTING TOWARD NUMBER OF SENIOR ADMIRALS AUTHORIZED TO BE ON ACTIVE DUTY

Section 406 of Pub. L. 103–337 provided that: ''The officer serving as Superintendent of the United States Naval Academy on the date of the enactment of this Act [Oct. 5, 1994], while so serving, shall not be counted for purposes of the limitations contained in section 525(b)(2) of title 10, United States Code.''

TEMPORARY INCREASE IN NUMBER OF GENERAL AND FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY

Temporary increases in the number of officers authorized in particular grades under this section were contained in the following authorization acts:

Pub. L. 99–661, div. A, title V, § 511, Nov. 14, 1986, 100 Stat. 3869.

Pub. L. 99–570, title III, § 3058, Oct. 27, 1986, 100 Stat. 3207–79.

Pub. L. 99–145, title V, § 515, Nov. 8, 1985, 99 Stat. 630.

Pub. L. 98–525, title V, § 511, Oct. 19, 1984, 98 Stat. 2521.

Pub. L. 98–94, title X, § 1001, Sept. 24, 1983, 97 Stat. 654.

Pub. L. 97–252, title XI, § 1116, Sept. 8, 1982, 96 Stat. 750.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 527 of this title.

§ 526. Authorized strength: general and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 386 before October 1, 1995, and 302 on and after that date.

(2) For the Navy, 250 before October 1, 1995, and 216 on and after that date.

(3) For the Air Force, 326 before October 1, 1995, and 279 on and after that date.

(4) For the Marine Corps, 68.

(b) TRANSFERS BETWEEN SERVICES.—During the period before October 1, 1995, the Secretary of Defense may increase the number of general officers on active duty in the Army, Air Force, or Marine Corps, or the number of flag officers on active duty in the Navy, above the applicable number specified in subsection (a) by a total of not more than five. Whenever any such increase is made, the Secretary shall make a corresponding reduction in the number of such officers that may serve on active duty in general or flag officer grades in one of the other armed forces.

(c) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Chairman of the Joint Chiefs of Staff may designate up to 12 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a) that are applicable on and after October 1, 1995. Officers in positions so designated shall not be counted for the purposes of those limitations.

(2) This subsection shall cease to be effective on October 1, 1998.

(d) NOTICE TO CONGRESS UPON CHANGE IN GRADE FOR CERTAIN POSITIONS.—(1) Not later than 60 days before an action specified in para-

graph (2) may become effective, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report providing notice of the intended action and an analytically based justification for the intended action.

(2) Paragraph (1) applies in the case of the following actions:

(A) A change in the grade authorized as of July 1, 1994, for a general officer position in the National Guard Bureau, a general or flag officer position in the Office of a Chief of a reserve component, or a general or flag officer position in the headquarters of a reserve component command.

(B) Assignment of a reserve component officer to a general officer position in the the[1] National Guard Bureau, to a general or flag officer position in the Office of a Chief of a reserve component, or a[2] general or flag officer position in the headquarters of a reserve component command in a grade other the[3] grade authorized for that position as of July 1, 1994.

(C) Assignment of an officer other than a general or flag officer as the military executive to the Reserve Forces Policy Board.

(e) EXCLUSION OF CERTAIN OFFICERS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(Added Pub. L. 100–370, §1(b)(1)(B), July 19, 1988, 102 Stat. 840; amended Pub. L. 101–510, div. A, title IV, §403(a), Nov. 5, 1990, 104 Stat. 1545; Pub. L. 102–484, div. A, title IV, §403, Oct. 23, 1992, 106 Stat. 2398; Pub. L. 103–337, div. A, title IV, §404, title V, §512, Oct. 5, 1994, 108 Stat. 2744, 2752.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 95–79, title VIII, §811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, §817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, §1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, §602, Dec. 1, 1981, 95 Stat. 1110.

Present law (section 811(a) of Public Law 95–79, as amended) provides that the authority to suspend the limitation on the number of general and flag officers who may be serving on active duty applies during war or national emergency. In codifying the limitation (in section 526 of title 10 as proposed to be added by section 1(b) of the bill), the committee determined that the same war and emergency waiver authority as applies to other limitations on the number of officers on active duty under the existing 10 U.S.C. 526 (redesignated as 10 U.S.C. 527 by the bill) should apply with respect to this limitation and accordingly amended the suspension authority in present law to include the codified general and flag officer limitation. This authority is slightly different from the waiver authority in the source law in that the suspension would expire 2 years after it takes effect or 1 year after the end of the war or national emergency, whichever occurs first, rather than upon termination of the war or emergency.

PRIOR PROVISIONS

A prior section 526 was renumbered section 527 of this title.

[1] So in original.

[2] So in original. Probably should be preceded by "to".

[3] So in original. Probably should be preceded by "than".

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–337, §404, struck out "before October 1, 1995, and 61 on and after that date" after "Corps, 68".

Subsecs. (d), (e). Pub. L. 103–337, §512, added subsecs. (d) and (e).

1992—Subsec. (b). Pub. L. 102–484, §403(b), inserted heading.

Subsec. (c). Pub. L. 102–484, §403(a), added subsec. (c).

1990—Pub. L. 101–510 amended section generally. Prior to amendment, text read as follows: "The total number of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy may not exceed 1,073."

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 403(a) of Pub. L. 101–510 provided that the amendment made by that section is effective Sept. 30, 1991.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 527, 3210, 5150, 8210, 12004 of this title.

§527. Authority to suspend sections 523, 525, and 526

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 525, or 526 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2845, §526; renumbered §527 and amended Pub. L. 100–370, §1(b)(1)(A), (2), July 19, 1988, 102 Stat. 840; Pub. L. 103–337, div. A, title XVI, §1671(c)(4), Oct. 5, 1994, 108 Stat. 3014.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

AMENDMENTS

1994—Pub. L. 103–337 struck out "524," after "523," in section catchline and in text.

1988—Pub. L. 100–370 renumbered section 526 of this title as this section, substituted "524, 525, and 526" for "524, and 525" in section catchline, and "524, 525, or 526" for "524, or 525" in text.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section to suspend operation of sections 523, 524 [now 12011], and 525 of this title, relating to authorized strength of commissioned officers, delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, the exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure that actions taken pursuant to any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§ 2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§ 201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of section 517, 523, 524, 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in this section.

§ 528. Limitation on number of officers on active duty in grades of general and admiral

(a) LIMITATION.—The total number of officers on active duty after September 30, 1995, in the Army, Air Force, and Marine Corps in the grade of general and in the Navy in the grade of admiral may not exceed 32.

(b) EXCEPTIONS.—The limitation in subsection (a) does not apply in the case of an officer serving in the grade of general or admiral in a position that is specifically exempted by law from being counted for purposes of limitations by law on the total number of officers that may be on active duty in the grades of general and admiral or the number of officers that may be on active duty in that officer's armed force in the grade of general or admiral.

(Added Pub. L. 103–337, div. A, title IV, § 405(b)(1), Oct. 5, 1994, 108 Stat. 2744.)

CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.
531. Original appointments of commissioned officers.
532. Qualifications for original appointment as a commissioned officer.
533. Service credit upon original appointment as a commissioned officer.
541. Graduates of the United States Military, Naval, and Air Force Academies.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, § 1112(b)(1), Dec. 5, 1991, 105 Stat. 1501, substituted ''ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES'' for ''APPOINTMENTS IN REGULAR COMPONENTS'' as chapter heading, struck out analysis of subchapters listing subchapter I ''Original Appointments of Regular Officers in Grades above Warrant Officer Grades'' and subchapter II ''Appointments of Regular Warrant Officers'', and struck out subchapter I heading.

1980—Pub. L. 96–513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845, inserted an analysis of subchapters immediately following chapter heading, added subchapter I heading, and, in analysis of sections following subchapter I heading, added items 531, 532, and 533 preceding item 541, re-enacted item 541 without change, and struck out, following item 541, items 555 to 565. The items 555 to 565 formerly set out in the analysis of sections immediately following chapter heading were transferred to a position following a new heading for subchapter II preceding section 555.

CROSS REFERENCES

Particular provisions relating to appointments—
Regular Air Force, see section 8281 et seq. of this title.
Regular Army, see section 3281 et seq. of this title.
Regular Coast Guard, see sections 212, 214 of Title 14, Coast Guard.
Regular Navy and Regular Marine Corps, see section 5582 et seq. of this title.

§ 531. Original appointments of commissioned officers

(a) Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(Added Pub. L. 96–513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, § 3(a), July 10, 1981, 95 Stat. 124.)

AMENDMENTS

1981—Pub. L. 97–22 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

PROGRAM TO INCREASE USE OF CERTAIN NURSES BY MILITARY DEPARTMENTS

Pub. L. 101–189, div. A, title VII, §708, Nov. 29, 1989, 103 Stat. 1475, provided that:

''(a) PROGRAM REQUIRED.—(1) Not later than September 30, 1991, the Secretary of each military department shall implement a program to appoint persons who have an associate degree or diploma in nursing (but have not received a baccalaureate degree in nursing) as officers and to assign such officers to duty as nurses.

''(2) An officer appointed pursuant to the program required by subsection (a) shall be appointed in a warrant officer grade or in a commissioned grade not higher than O–3. Such officer may not be promoted above the grade of O–3 unless the officer receives a baccalaureate degree in nursing.

''(b) REPORT ON IMPLEMENTATION.—Not later than April 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the actions taken by the Secretaries of the military departments to implement the program required by this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4353, 9353 of this title.

§532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be given only to a person who—

(1) is a citizen of the United States;

(2) is able to complete 20 years of active commissioned service before his fifty-fifth birthday;

(3) is of good moral character;

(4) is physically qualified for active service; and

(5) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 5589 or 5596 of this title.

(d)(1) A person receiving an original appointment as a medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps is not subject to clause (2) of subsection (a).

(2) A reserve commissioned officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense) is not subject to clause (2) of subsection (a).

(e) After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, §3(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–295, §1(7), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 102–190, div. A, title V, §501, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–160, div. A, title V, §510, Nov. 30, 1993, 107 Stat. 1648.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 designated existing provisions as par. (1) and added par. (2).

1991—Subsec. (e). Pub. L. 102–190 added subsec. (e).

1982—Pub. L. 97–295 inserted ''a'' after ''original appointment as'' in section catchline.

1981—Subsec. (d). Pub. L. 97–22 substituted ''medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps'' for ''medical officer or dental officer or as a chaplain''.

APPOINTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS AS COMMISSIONED OFFICERS

Pub. L. 98–94, title X, §1006, Sept. 24, 1983, 97 Stat. 661, provided that a citizen of the Northern Mariana Islands who indicates in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States, and who is otherwise qualified for military service under applicable laws and regulations, may be appointed as an officer in the Armed Forces of the United States, may be appointed or enrolled in the Senior Reserve Officers' Training Corps program of any of the Armed Forces under chapter 103 of title 10, United States Code, and may be selected to be a participant in the Armed Forces Health Professions Scholarship program under chapter 105 of such title, and that this section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands. The Commonwealth was established as of 12:01 a.m., Nov. 4, 1986, see section 2(a), (b) of Proc. No. 5564, set out as a note

under section 1801 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5589 of this title.

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

(1) initial grade as a regular officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advo-

cate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall—

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2846; amended Pub. L. 97–22, §3(c), July 10, 1981, 95 Stat. 125; Pub. L. 98–94, title X, §1007(c)(1), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103–160, div. A, title V, §509(a), Nov. 30, 1993, 107 Stat. 1647.)

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–160, §509(a)(1), in second sentence, substituted ''In determining'' for ''Except as provided in clause (E), in determining'' and ''advanced education required'' for ''postsecondary education in excess of four that are required''.

Subsec. (b)(1)(E), (F). Pub. L. 103–160, §509(a)(2), (3), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed, designated, or assigned was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.''

1987—Subsec. (b)(1)(B). Pub. L. 100–180 designated existing provisions as cl. (i) and added cl. (ii).

1983—Subsec. (a)(1). Pub. L. 98–94 inserted '', the National Oceanic and Atmospheric Administration, or the Public Health Service''.

1981—Subsec. (b)(1)(A). Pub. L. 97–22, §3(c)(1), inserted '', designated, or assigned'' in first sentence after ''persons appointed'' and substituted ''Except as provided in clause (E), in determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of postsecondary education in excess of four that are required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree'' for ''(Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary concerned shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree''.

Subsec. (b)(1)(B). Pub. L. 97–22, §3(c)(2), substituted ''appointment, designation, or assignment, if such advanced education'' for ''appointment as an officer, if such advanced education''.

Subsec. (b)(1)(E). Pub. L. 97–22, §3(c)(3), substituted ''person being appointed, designated, or assigned was admitted'' for ''person being appointed was admitted''.

Subsec. (d)(1). Pub. L. 97–22, §3(c)(4), inserted provision that, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

Subsec. (f). Pub. L. 97–22, §3(c)(5), substituted ''A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall (1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and (2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer'' for ''An officer of a reserve component who receives an original appointment as an officer (other than a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall be appointed in the grade and with the date of rank to which he would have been entitled had he been serving on active duty as an officer of a reserve component on the date of such original appointment as a regular officer''.

RATIFICATION OF SERVICE CREDIT AWARDED PRIOR TO NOVEMBER 30, 1993

Section 509(e) of Pub. L. 103–160 provided that: ''To the extent that service credit awarded before the date of the enactment of this Act [Nov. 30, 1993] under section 533, 3353, 5600, or 8353 of title 10, United States Code, based on advanced education in medicine or dentistry was awarded consistent with that section as amended by this section (whether or not properly awarded under that section as in effect before such amendment), the awarding of that service credit is hereby ratified.''

TRANSITION PROVISION UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For savings provision relating to constructive service previously granted, see section 625 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 531, 603 of this title.

§ 541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
541(a)	10:1092c–1(a) (1st 59 words of 1st sentence). 10:1856(a) (1st 59 words of 1st sentence). 34:1057–1(a) (1st 59 words of 1st sentence).	Apr. 1, 1954, ch. 127, § 8, 68 Stat. 48.
541(b)	10:1092c–1(a) (1st sentence, less 1st 59 words). 10:1856(a) (1st sentence, less 1st 59 words). 34:1057–1(a) (1st sentence, less 1st 59 words).	
541(c)	10:1092c–1 (less (a)). 10:1856 (less (a)). 34:1057–1 (less (a)).	

In subsection (a), the words ''is entitled * * * to'' are substituted for the words ''shall * * * be afforded an opportunity to''.

In subsection (b), the words ''is entitled'' are substituted for the word ''shall''.

In subsection (c), the words ''and fair'' are omitted as surplusage. 10:1092c–1(c), 10:1856(c), and 34:1057–1(c) are omitted as covered by section 51(a) of the bill.

EFFECTIVE DATE

Section 52(a) of act Aug. 10, 1956, provided that: ''Section 541 of title 10, United States Code, enacted by section 1 of this Act, takes effect (1) in the year in which the initial class graduates from the United States Air Force Academy, or (2) upon the rescission of the agreement under which graduates of the United States Military Academy and the United States Naval Academy may volunteer for appointment in the Air Force, whichever is earlier.''

APPOINTMENT OF UNITED STATES MILITARY ACADEMY GRADUATES IN AIR FORCE

Section 44 of act Aug. 10, 1956, provided that:

''(a) Notwithstanding any other provision of law, a cadet who graduates from the United States Military Academy may, upon graduation and before the effective date of section 541 of title 10, United States Code, be appointed a second lieutenant in the Regular Air Force.

''(b) Notwithstanding any other provision of law, no person who was a cadet at the United States Military Academy may be originally appointed in a commissioned grade in the Regular Air Force under this section before the date on which his classmates at the Academy are graduated and appointed as officers. No person who was a cadet at, but did not graduate from, the Academy may be credited, upon appointment as a commissioned officer of the Regular Air Force, with longer service than that credited to any member of his class at the Academy whose service in the Air Force, or in the Army and the Air Force, has been continuous since graduation.

''(c) A graduate of the United States Military Academy who is originally appointed a second lieutenant in the Regular Air Force under this section is not entitled to any service credit under this section.

''(d) Rank among graduates of each class of the United States Military Academy who, upon graduation, are appointed in the Regular Air Force under this section shall be fixed under regulations prescribed by the Secretary of the Air Force.

''(e) The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.''

CROSS REFERENCES

Commission on graduation, cadets, see sections 4353, 9353 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 583 of this title.

[§§ 555 to 565. Repealed. Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1492]

Section 555, acts Aug. 10, 1956, ch. 1041, 70A Stat. 20; Sept. 7, 1962, Pub. L. 87–649, §§ 6(f)(2), 14c(2), 76 Stat. 494, 501; July 30, 1977, Pub. L. 95–79, title III, § 302(a)(4), 91 Stat. 326; Nov. 8, 1985, Pub. L. 99–145, title V, § 531(a), title XIII, § 1303(a)(5), 99 Stat. 633, 739, related to warrant officer grades. See section 571(a) and (b) of this title.

Section 556, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to credit for service of persons originally appointed in regular warrant officer grades under section 555 of this title. See section 572 of this title.

Section 557, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to qualifications for promotion of regular warrant officers.

Section 558, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to appointment of selection boards to consider promotions of regular warrant officers. See section 573(a), (b), (e), and (f) of this title.

Section 559, act Aug. 10, 1956, ch. 1041, 70A Stat. 21, related to eligibility of regular warrant officers for promotion.

Section 560, acts Aug. 10, 1956, ch. 1041, 70A Stat. 21; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(3), 72 Stat. 1564, related to selection procedure for promotion of warrant officers. See section 576(a) to (e) of this title.

Section 561, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effect of failure of selection of regular warrant officers for promotion. See section 577 of this title.

Section 562, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to disapproval of promotion of regular warrant officers by Secretary concerned, President, or Senate. See section 579 of this title.

Section 563, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effective date of promotion of regular warrant officer.

Section 564, acts Aug. 10, 1956, ch. 1041, 70A Stat. 22; Sept. 7, 1962, Pub. L. 87–649, §6(f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115; Dec. 12, 1980, Pub. L. 96–513, title V, §501(6), 94 Stat. 2907, related to effect of second failure of promotion for regular warrant officers. See section 580(a) to (d) of this title.

Section 565, act Aug. 10, 1956, ch. 1041, 70A Stat. 24, related to suspension of laws for promotion or mandatory retirement or separation of regular warrant officers during war or emergency.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

PRESERVATION OF EXISTING LAW FOR COAST GUARD

Pub. L. 102–190, div. A, title XI, §1125(a), Dec. 5, 1991, 105 Stat. 1505, provided that sections 555 to 565 of this title, as in effect on the day before Feb. 1, 1992, would continue to apply to the Coast Guard on and after that date, prior to repeal by Pub. L. 103–337, div. A, title V, §541(f)(1), Oct. 5, 1994, 108 Stat. 2766.

CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST

Sec.
571. Warrant officers: grades.
572. Warrant officers: original appointment; service credit.
573. Convening of selection boards.
574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones.
575. Recommendations for promotion by selection boards.
576. Information to be furnished to selection boards; selection procedures.
577. Promotions: effect of failure of selection for.
578. Promotions: how made; effective date.
579. Removal from a promotion list.
580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation.
580a. Enhanced authority for selective early discharges.
581. Selective retirement.
582. Warrant officer active-duty list: exclusions.
583. Definitions.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title V, §504(b), Nov. 30, 1993, 107 Stat. 1645, added item 580a.

1992—Pub. L. 102–484, div. A, title X, §1052(6), Oct. 23, 1992, 106 Stat. 2499, inserted ''to be'' after ''Information'' in item 576 and substituted ''Promotions:'' for ''Promotions;'' in item 578.

CROSS REFERENCES

Suspension of officer personnel laws during war or national emergency, see section 123 of this title.

§571. Warrant officers: grades

(a) The regular warrant officer grades in the armed forces corresponding to the pay grades prescribed for warrant officers by section 201(b) of title 37 are as follows:

Warrant officer grade:

Chief warrant officer, W–5.
Chief warrant officer, W–4.
Chief warrant officer, W–3.
Chief warrant officer, W–2.
Warrant officer, W–1.

(b) Appointments in the grade of regular warrant officer, W–1, shall be made by warrant by the Secretary concerned. Appointments in regular chief warrant officer grades shall be made by commission by the President.

(c) An appointment may not be made in any of the armed forces in the regular warrant officer grade of chief warrant officer, W–5, if the appointment would result in more than 5 percent of the warrant officers of that armed force on active duty being in the grade of chief warrant officer, W–5. In computing the limitation prescribed in the preceding sentence, there shall be excluded warrant officers described in section 582 of this title.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 102–484, div. A, title X, §1052(2), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(a)(2), Oct. 5, 1994, 108 Stat. 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 555 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps''.

1992—Subsec. (a). Pub. L. 102–484 inserted a period at end of each item in table.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 541(h) of Pub. L. 103–337 provided that: ''This section [enacting section 215 of Title 14, Coast Guard, amending this section, sections 573 to 576, 580, 580a, 581, and 583 of this title, and sections 41, 214, 286a, and 334 of Title 14, repealing sections 212 and 213 of Title 14, enacting provisions set out as notes under this section, and repealing a provision set out as a note under former section 555 of this title] and the amendments made by this section shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE

Chapter effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

SHORT TITLE

Section 1101 of title XI of Pub. L. 102–190 provided that: ''This title [enacting this chapter and section 742 of this title, amending sections 521, 522, 597, 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under this section, sections 521 and 555 of this title, and section 1009 of Title 37] may be cited as the 'Warrant Officer Management Act'.''

TRANSITION AND SAVINGS PROVISIONS

Section 541(c), (d) of Pub. L. 103–337 provided that:

''(c) TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW

CHIEF WARRANT OFFICER, W–5.—(1) A regular warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is on active duty and—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade;

''(B) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer W–5; or

''(C) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which that warrant officer is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as amended by this [sic] subsection (b), for promotion to the permanent grade equivalent to the grade in which that warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(2) An officer referred to in subparagraph (A) of paragraph (1) who is not promoted to the grade to which that warrant officer is considered under such subsection to have been recommended for promotion because that officer's name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the temporary grade in which that warrant officer was serving on the effective date of this section as if that warrant officer were serving in the permanent grade.

''(3) The date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade in which that warrant officer is serving on the effective date of this section is the date of that officer's temporary appointment in that grade.

''(d) TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1)(A) Except as provided in paragraph (2), a reserve warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is subject to placement on the warrant officer active-duty list and who—

''(i) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade; or

''(ii) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than that warrant officer's permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which the warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(B) The date of rank of a warrant officer referred to in subparagraph (A)(i) who is promoted to the grade in which that warrant officer is considered under such subparagraph to have been recommended for promotion is the date of the temporary appointment of that warrant officer in that grade.

''(2) A reserve warrant officer of the Coast Guard who on the effective date of this section—

''(A) is subject to placement on the warrant officer active-duty list;

''(B) is serving on active duty in a temporary grade; and

''(C) holds a permanent grade higher than the temporary grade in which that warrant officer is serving;

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than the permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, the appointment of that warrant officer to such grade shall be a temporary appointment.''

Part B (§§ 1121–1124) of title XI of Pub. L. 102–190 provided that:

''SEC. 1121. TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—A regular warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is on active duty and—

''(1) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

''(3) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as added by this title, for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(b) BOARD CONSIDERATION FOR OFFICERS REMOVED FROM PROMOTION LIST.—An officer referred to in paragraph (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by this title, for promotion to the permanent grade equivalent to the temporary grade in which he was serving on the effective date of this title as if he were serving in his permanent grade.

''(c) DATE OF RANK.—The date of rank of an officer referred to in subsection (a)(1) who is promoted to the grade in which he is serving on the effective date of this title is the date of his temporary appointment in that grade.

''SEC. 1122. TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—(1) Except as provided in subsection (b), a reserve warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is subject to placement on the warrant officer active-duty list and who—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade; or

''(B) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than his permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(2) The date of rank of a warrant officer referred to in paragraph (1)(A) who is promoted to the grade in which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

''(b) RESERVES ON ACTIVE DUTY.—A reserve warrant officer who on the effective date of this title—

''(1) is subject to placement on the warrant officer active-duty list;

''(2) is serving on active duty in a temporary grade; and

''(3) holds a permanent grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than his permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, his appointment to such grade shall be a temporary appointment.

''SEC. 1123. CONTINUATION OF CERTAIN TEMPORARY APPOINTMENTS OF NAVY AND MARINE CORPS WARRANT OFFICERS.

''A warrant officer of the Navy or Marine Corps who, on the effective date of this title [Feb. 1, 1992], is subject to placement on the warrant officer active-duty list and who—

''(1) was appointed as a temporary warrant officer under section 5596 of title 10, United States Code, and

''(2) has retained a permanent enlisted status,

shall, while continuing on active duty, retain such temporary status and grade. Such an officer shall be considered for promotion to a higher warrant officer grade under this title [see Short Title note above] as if that temporary grade is a permanent grade. If the officer is recommended for promotion, the officer's appointment to that grade shall be a temporary appointment.

''SEC. 1124. SAVINGS PROVISION FOR CERTAIN REGULAR ARMY WARRANT OFFICERS FACING MANDATORY RETIREMENT FOR LENGTH OF SERVICE.

''(a) SAVINGS PROVISION.—Subject to subsection (b), a regular warrant officer of the Army who on the effective date of this title [Feb. 1, 1992]—

''(1) is a permanent regular chief warrant officer; or

''(2) is on a list of officers recommended for promotion to a regular chief warrant officer grade,

may be retained on active duty until he completes 30 years of active service or 24 years of active warrant officer service, whichever is later, that could be credited to him under section 511 of the Career Compensation Act of 1949 (70 Stat. 114) [set out as a note under section 580 of this title] (as in effect on the day before the effective date of this part [Feb. 1, 1992]), and then be retired under the appropriate provision of title 10, United States Code, on the first day of the month after the month in which he completes that service.

''(b) EXCEPTIONS.—Subsection (a) does not apply to a regular warrant officer who—

''(1) is sooner retired or separated under another provision of law;

''(2) is promoted to the regular grade of chief warrant officer, W–5; or

''(3) is continued on active duty under section 580(e) of title 10, United States Code, as added by this title.''

ESTABLISHMENT OF PERMANENT GRADE OF CHIEF WARRANT OFFICER, W–5

Section 541(a)(1) of Pub. L. 103–337 provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Coast Guard.''

Section 1111(a) of Pub. L. 102–190 provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Army, Navy, Air Force, and Marine Corps.''

CROSS REFERENCES

Definition of warrant officer, see section 101 of this title.

Grades—

Applicability to permanent reserve warrant officers, see section 12241 of this title.

Navy and Marine Corps, see section 5503 of this title.

Pay grades, see section 201 of Title 37, Pay and Allowances of the Uniformed Services.

Qualifications for original appointment, Army and Air Force, see sections 3310, 8310 of this title.

Reserve warrant officers, appointment, see section 12241 of this title.

Temporary appointments—

Coast Guard, see section 214 of Title 14, Coast Guard.

Navy and Marine Corps, see section 5596 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12241 of this title.

§ 572. Warrant officers: original appointment; service credit

For the purposes of promotion, persons originally appointed in regular or reserve warrant officer grades shall be credited with such service as the Secretary concerned may prescribe. However, such a person may not be credited with a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 556 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

§ 573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board.

(c) The Secretary concerned may convene selection boards to recommend regular warrant of-

ficers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 103–337, div. A, title V, § 541(b)(1), Oct. 5, 1994, 108 Stat. 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 558 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 541(b)(1)(A), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (a)(2). Pub. L. 103–337, § 541(b)(1)(B), struck out ''of the military department'' after ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 574, 575, 576, 577, 580, 580a, 581, 583 of this title.

§ 574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones

(a) The Secretary concerned shall maintain for each armed force under the jurisdiction of that Secretary a single list of all warrant officers (other than warrant officers described in section 582 of this title) who are on active duty.

(b) The Secretary concerned may establish competitive categories for promotion. Warrant officers in the same competitive category shall compete among themselves for promotion.

(c) Before convening a selection board under section 573 of this title, the Secretary concerned shall determine for each grade (or grade and competitive category) to be considered by the board the following:

(1) The maximum number of warrant officers to be recommended for promotion.

(2) A promotion zone for warrant officers on the warrant officer active-duty list.

(d) The position of a warrant officer on the warrant officer active-duty list shall be determined as follows:

(1) Warrant officers shall be carried in the order of seniority of the grade in which they are serving on active duty.

(2) Warrant officers serving in the same grade shall be carried in the order of their rank in that grade.

(3) A warrant officer on the warrant officer active-duty list who receives a temporary appointment or a temporary assignment in a grade other than a warrant officer grade or chief warrant officer grade shall retain his position on the warrant officer active-duty list while so serving.

(e) A chief warrant officer may not be considered for promotion to the next higher grade under this chapter until the officer has completed three years of service on active duty in the grade in which the officer is serving.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1494; amended Pub. L. 102–484, div. A, title X, § 1052(3), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 541(b)(2), Oct. 5, 1994, 108 Stat. 2764.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–337 substituted ''Secretary concerned'' for ''Secretary of each military department''.

1992—Subsec. (d)(3). Pub. L. 102–484 substituted ''active-duty list'' for ''active duty list'' before ''while''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 575, 576 of this title.

§ 575. Recommendations for promotion by selection boards

(a) A selection board convened under section 573(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for warrant officers with particular skills, considers best qualified for promotion within each grade (or grade and competitive category) considered by the board.

(b)(1) In the case of a selection board to consider warrant officers for selection for promotion to the grade of chief warrant officer, W–4, or chief warrant officer, W–5, the Secretary concerned shall establish the number of warrant officers that the selection board may recommend from among warrant officers being considered from below the promotion zone within each grade (or grade and competitive category). The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 574 of this title to recommend for promotion.

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number recommended, except that the Secretary of Defense

and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent.

(c) A selection board convened under section 573(a) of this title may not recommend a warrant officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board find that the officer is fully qualified for promotion.

(d) Each time a selection board is convened under section 573(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration (except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title) shall be considered for promotion.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1495; amended Pub. L. 103–337, div. A, title V, §§501(a), 541(b)(3), Oct. 5, 1994, 108 Stat. 2748, 2764.)

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–337, §541(b)(3), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, §501(a), inserted ''(except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title)'' after ''under consideration''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(3) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§576. Information to be furnished to selection boards; selection procedures

(a) The Secretary concerned shall furnish to each selection board convened under section 573 of this title the following:

(1) The maximum number of warrant officers that may be recommended for promotion from those serving in any grade (or grade and competitive category) to be considered, as determined in accordance with section 574 of this title.

(2) The names and pertinent records of all officers in each grade (or grade and competitive category) to be considered.

(3) Such information or guidelines relating to the needs of the armed force concerned for warrant officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a grade or competitive category, as the Secretary concerned determines to be relevant in relation to the requirements of that armed force.

(b) From each promotion zone for a grade (or grade and competitive category), the selection board shall recommend for promotion to the next higher warrant officer grade those warrant officers whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

(c) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of the seniority on the warrant officer active-duty list.

(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those warrant officers considered by it whose records establish, in its opinion, their unfitness or unsatisfactory performance. A regular warrant officer whose name is so reported shall be considered, under regulations provided by the Secretary concerned, for retirement or separation under section 1166 of this title.

(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

(f)(1) Upon receipt of the report of a selection board submitted to him under subsection (e), the Secretary concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under this section.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under this section, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 573 of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with subsection (e).

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1496; amended Pub. L. 103–337, div. A, title V, §§501(b), 541(b)(4), Oct. 5, 1994, 108 Stat. 2748, 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 560 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §541(b)(4)(A), struck out ''of the military department'' after ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–337, §541(b)(4)(B), struck out ''of the military department'' after ''submitted to the Secretary''.

Subsec. (f)(1). Pub. L. 103–337, §501(b), struck out after first sentence ''Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (e).''

Subsec. (f)(2). Pub. L. 103–337, §541(b)(4)(C), struck out ''of the military department'' after ''paragraph (1), the Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(4) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 1166 of this title.

§ 577. Promotions: effect of failure of selection for

A warrant officer who has been considered for promotion by a selection board convened under section 573 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade (or grade and competitive category) until he is retired or separated or he is selected for promotion. However, the Secretary concerned may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, a warrant officer who has an established separation date that is within 90 days after the date on which the board is convened.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 561 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 575 of this title.

§ 578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1497; amended Pub. L. 102–484, div. A, title X, § 1052(4), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 501(c), Oct. 5, 1994, 108 Stat. 2748.)

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–337 added subsecs. (e) and (f).

1992—Pub. L. 102–484 substituted ''Promotions:'' for ''Promotions;'' in section catchline.

§ 579. Removal from a promotion list

(a) The name of a warrant officer recommended for promotion by a selection board convened under this chapter may be removed from the report of the selection board by the President.

(b) The Secretary concerned may remove the name of a warrant officer who is on a promotion list as a result of being recommended for promotion by a selection board convened under this chapter at any time before the promotion is effective.

(c) An officer whose name is removed from the list of officers recommended for promotion by a selection board continues to be eligible for consideration for promotion.

(d) If the next selection board that considers the warrant officer for promotion under this chapter selects the warrant officer for promotion and the warrant officer is promoted, the Secretary concerned may, upon his promotion, grant him the same effective date for pay and allowances and the same date of rank, and the same position on the warrant officer active-duty list as the warrant officer would have had if his name had not been so removed.

(e) If the next selection board does not select the warrant officer for promotion, or if his name is again removed under subsection (a) from the list of officers recommended for promotion by the selection board or under subsection (b) from the warrant officer promotion list, he shall be treated for all purposes as if he has twice failed of selection for promotion.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 562 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 580 of this title.

§ 580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation

(a)(1) Unless retired or separated sooner under some other provision of law, a regular chief warrant officer who has twice failed of selection for

promotion to the next higher regular warrant officer grade shall be retired under paragraph (2) or (3) or separated from active duty under paragraph (4).

(2) If a warrant officer described in paragraph (1) has more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired. The date of such retirement shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(3) If a warrant officer described in paragraph (1) has at least 18 but not more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired not later than the date determined under the next sentence unless he is selected for promotion to the next higher regular warrant officer grade before that date. The date of the retirement of a warrant officer under the preceding sentence shall be on a date specified by the Secretary concerned, but not later than the first day of the seventh calendar month beginning after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(4)(A) If a warrant officer described in paragraph (1) has less than 18 years of creditable active service on (i) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (ii) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be separated (except as provided in subparagraph (C)). The date of such separation shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence.

(B) A warrant officer separated under this paragraph shall receive separation pay computed under section 1174 of this title, or severance pay computed under section 286a of title 14, as appropriate, except in a case in which—

(i) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(ii) he is serving on active duty in a grade above chief warrant officer, W–5, and he elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(C) If on the date on which a warrant officer is to be separated under subparagraph (A) the warrant officer has at least 18 years of creditable active service, the warrant officer shall be retained on active duty until retired under paragraph (3) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under subparagraph (A) or (B) of that paragraph.

(5) A warrant officer who is subject to retirement or discharge under this subsection is not eligible for further consideration for promotion.

(6) In this subsection, the term ''creditable active service'' means active service that could be credited to a warrant officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of a warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty in a grade above chief warrant officer, W–5, and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W–5, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date on which he is so retired or separated.

(e)(1) A regular warrant officer subject to discharge or retirement under this section may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 573(c) of this title.

(2) A warrant officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with this section.

(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding subparagraph (A), a warrant officer who would otherwise be discharged under such subparagraph and who is within two years of qualifying for retirement under section 1293 of this title shall, unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be con-

sidered to be an involuntary retirement or discharge for purposes of any other provision of law.

(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 573(c) of this title is subject to the approval of the Secretary concerned.

(6) The Secretary of Defense and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1498; amended Pub. L. 103–160, div. A, title V, § 505(a), Nov. 30, 1993, 107 Stat. 1645; Pub. L. 103–337, div. A, title V, § 541(b)(5), Oct. 5, 1994, 108 Stat. 2765.)

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(6), is set out below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 564 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

AMENDMENTS

1994—Subsec. (a)(4)(B). Pub. L. 103–337, § 541(b)(5)(A), inserted ", or severance pay computed under section 286a of title 14, as appropriate," after "section 1174 of this title".

Subsec. (e)(6). Pub. L. 103–337, § 541(b)(5)(B), inserted "and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy," after "Secretary of Defense".

1993—Subsec. (a)(4)(A). Pub. L. 103–160, § 505(a)(1), inserted "(except as provided in subparagraph (C))" after "shall be separated".

Subsec. (a)(4)(C). Pub. L. 103–160, § 505(a)(2), added subpar. (C).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 505(b) of Pub. L. 103–160 provided that: "The amendments made by subsection (a) [amending this section] shall apply to warrant officers who have not been separated pursuant to section 580(a)(4) of title 10, United States Code, before the date of enactment of this Act [Nov. 30, 1993]."

RETIRED AND RETAINER PAY OF MEMBERS ON RETIRED LISTS OR RECEIVING RETAINER PAY

Section 511 of act Oct. 12, 1949, ch. 681, title V, 63 Stat. 829, as amended May 19, 1952, ch. 310, § 4, 66 Stat. 80; Apr. 23, 1956, ch. 208, § 1, 70 Stat. 114, provided that: "On and after the effective date of this section [Oct. 1, 1949] (1) members of the uniformed services heretofore retired for reasons other than for physical disability, (2) members heretofore transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, and (3) members of the Army Nurse Corps or the Navy Nurse Corps heretofore retired under the Act of May 13, 1926 (44 Stat. 513), shall be entitled to receive retired pay, retirement pay, retainer pay, or equivalent pay, in the amount whichever is the greater, computed by one of the following methods: (a) The monthly retired pay, retainer pay, or equivalent pay in the amount authorized for such members and former members by provisions of law in effect on the day immediately preceding the date of enactment of this Act [Oct. 12, 1949], or (b) monthly retired pay, retirement pay, retainer pay, or equivalent pay equal to 2½ per centum of the monthly basic pay of the highest federally recognized rank, grade, or rating, whether under a permanent or temporary appointment, satisfactorily held, by such member or former member, as determined by the Secretary concerned, and which such member, former member, or person would be entitled to receive if serving on active duty in such rank, grade, or rating, multiplied by the number of years of active service creditable to him: *Provided*, That for the purpose of the computation of (b) above, the retired or retirement pay of each commissioned officer of the Coast Guard who, upon retirement, was advanced one grade pursuant to the provisions of the Act of January 12, 1923 (Public Law 381, Sixty-seventh Congress), shall, unless a higher rank or grade is authorized by any provision of law, be based upon the commissioned officer grade authorized for such officer by such Act: *Provided further*, That for the purpose of the computation of (b) above, fractions of one-half year or more of active service shall be counted as a whole year: *Provided further*, That in no case shall such retired pay, retainer pay, or equivalent pay exceed 75 per centum of the monthly basic pay upon which the computation is based: *Provided further*, That for the purposes of this section, the term 'active service' as used herein shall mean all service as a member or as a former member of the uniformed services, service as a cadet or midshipman in the case of those members appointed to the United States Military Academy prior to August 24, 1912, or to the United States Naval Academy prior to March 4, 1913, if such service was creditable for longevity pay purposes at the time of retirement, or as a nurse, or as a contract nurse prior to February 2, 1901, or as a reserve nurse subsequent to February 2, 1901, or as a contract surgeon, or as a contract dental surgeon, or as an acting dental surgeon, or as a veterinarian in the Quartermaster Department, Cavalry, or Field Artillery, or as an Army field clerk or as a field clerk, Army Quartermaster Corps, while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in other provisions of law, including participation in exercises or performance of the duties provided for by sections 5, 81, 92, 94, 97, and 99 of the National Defense Act, as amended, and in the case of commissioned officers of the Public Health Service, that service which is creditable pursuant to part (3) of section 412 of this Act: *Provided further*, That the retired or retirement pay of each member referred to in (3) above shall, unless a higher rank or grade is authorized by any provision of law, be based upon the commissioned-officer grade authorized for such member by the Act of May 7, 1948 (Public Law 517, Eightieth Congress): *Provided further*, That (a) enlisted persons or former enlisted persons of the Regular Army or Regular Air Force who have been transferred prior to the effective date of this section to the Enlisted Reserve Corps or to the enlisted section of the Air Force Reserve and placed on the retired list of the Regular Army or the Regular Air Force, respectively, under the provisions of section 4 of the Act of October 6, 1945 (59 Stat. 539; 10 U.S.C. 948) [section 948 of former title 10], as amended, and (b) enlisted persons or former enlisted persons of the Regular Navy or Regular Marine Corps who have been transferred prior to the effective date of this section to the Fleet Reserve or the Fleet Marine Corps Reserve under the provisions of title II of the Naval Reserve Act of 1938, as amended, shall not be entitled to have their retired pay or retainer pay computed on the basis of the highest officer or warrant-officer grade held by them as authorized by this section until they have completed thirty years of service, to include the sum of their active service and their service on the retired list or in the Fleet Reserve or in the Fleet Marine Corps Reserve, as required by existing law: *And provided further*, That enlisted persons and warrant officers of the uniform services, heretofore or

hereafter advanced on the retired list to a higher officer rank or grade pursuant to any provision of law shall, if application therefore is made to the Secretary concerned within one year from the effective date of this section or within one year after the date of advancement on the retired list, whichever is the later, and subject to the approval of the Secretary concerned, be restored to their former retired enlisted or warrant-officer status, as the case may be, and shall thereafter be deemed to be enlisted or warrant-officer personnel, as appropriate, for all purposes, including the computation of their retired pay based on such enlisted or warrant-officer rank, grade, or rating, as the case may be.''

[Section 2 of act Apr. 23, 1956, provided that: ''The amendment made by this Act shall be effective as of October 1, 1949.'']

CROSS REFERENCES

Active service, definition, see section 101 of this title.

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Reenlistment after discharge, see section 515 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 1174, 1401, 1406 of this title.

§580a. Enhanced authority for selective early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on November 30, 1993, and ending on October 1, 1999, to take the action set forth in subsection (b) with respect to regular warrant officers of an armed force under the jurisdiction of that Secretary.

(b) The Secretary of a military department may, with respect to regular warrant officers of an armed force, when authorized to do so under subsection (a), convene selection boards under section 573(c) of this title to consider for discharge regular warrant officers on the warrant officer active-duty list—

(1) who have served at least one year of active duty in the grade currently held;

(2) whose names are not on a list of warrant officers recommended for promotion; and

(3) who are not eligible to be retired under any provision of law and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all regular warrant officers described in that subsection in a particular grade and competitive category; or

(B) the names of all regular warrant officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of warrant officers to be recommended for discharge by a selection board convened pursuant to subsection (b). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of regular warrant officers described in subsection (b) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of warrant officers of that armed force (or the number of warrant officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) A warrant officer who is recommended for discharge by a selection board convened pursuant to subsection (b) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of warrant officers for discharge under this subsection shall be based on the needs of the service.

(d) The discharge of any warrant officer pursuant to this section shall be considered involuntary for purposes of any other provision of law.

(e) This section applies to the Secretary of Transportation in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

(Added Pub. L. 103–160, div. A, title V, §504(a), Nov. 30, 1993, 107 Stat. 1644; amended Pub. L. 103–337, div. A, title V, §541(g), title X, §1070(a)(3), Oct. 5, 1994, 108 Stat. 2767, 2855.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §1070(a)(3), substituted ''November 30, 1993,'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 103–337, §541(g), added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(g) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§581. Selective retirement

(a) A regular warrant officer who holds a warrant officer grade above warrant officer, W–1, and whose name is not on a list of warrant officers recommended for promotion and who is eligible to retire under any provision of law may be considered for retirement by a selection board convened under section 573(c) of this title. The Secretary concerned shall specify the maximum number of warrant officers that such a board may recommend for retirement.

(b) A warrant officer who is recommended for retirement under this section and whose retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month be-

ginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for retirement.

(c) The retirement of a warrant officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(d)(1) The Secretary concerned shall prescribe regulations for the administration of this section. Such regulations shall require that when the Secretary concerned submits a list of regular warrant officers to a selection board convened under section 573(c) of this title to consider regular warrant officers for selection for retirement under this section, the list shall include each warrant officer on the active-duty list in the same grade or same grade and competitive category whose position on the active-duty list is between that of the most junior regular warrant officer in that grade whose name is submitted to the board and that of the most senior regular warrant officer in that grade whose name is submitted to the board.

(2) Such regulations shall establish procedures to exclude from consideration by the board any warrant officer who has been approved for voluntary retirement, or who is to be mandatorily retired under any other provision of law, during the fiscal year in which the board is convened or during the following fiscal year. An officer not considered by a selection board convened under section 573(c) of this title under such regulations because the officer has been approved for voluntary retirement shall be retired on the date approved for the retirement of such officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 102–484, div. A, title X, § 1052(5), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, § 541(b)(6), Oct. 5, 1994, 108 Stat. 2765.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 struck out ''in the Army, Navy, Air Force, or Marine Corps'' after ''A regular warrant officer''.

1992—Subsec. (d)(2). Pub. L. 102–484 substituted ''board'' for ''Board'' in two places in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 573 of this title.

§ 582. Warrant officer active-duty list: exclusions

Warrant officers in the following categories are not subject to this chapter:

(1) Reserve warrant officers—

(A) on active duty for training;

(B) on active duty under section 672(d)[1] of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(C) on active duty to pursue special work;

(D) ordered to active duty under section 673b[1] of this title; or

(E) on full-time National Guard duty.

(2) Retired warrant officers on active duty (other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date).

(3) Students enrolled in the Army Physician's Assistant Program.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 103–337, div. A, title V, § 501(d), Oct. 5, 1994, 108 Stat. 2748.)

REFERENCES IN TEXT

Section 672 of this title, referred to in par. (1)(B), was renumbered section 12301 of this title by Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992, and a new section 672 was added which does not contain a subsec. (d).

Section 673b of this title, referred to in par. (1)(D), was renumbered section 12304 of this title by Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.

AMENDMENTS

1994—Par. (2). Pub. L. 103–337 inserted before period at end ''(other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 574 of this title.

§ 583. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) in the case of grades below chief warrant officer, W–5, have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of warrant officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the warrant officer designated by the Secretary concerned to be the junior warrant officer in the promotion zone eligible for promotion to the next higher grade.

(2) The term ''warrant officers above the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are senior to the senior warrant officer in the promotion zone.

(3) The term ''warrant officers below the promotion zone'' means a group of officers on

[1] See References in Text note below.

a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are junior to the junior warrant officer in the promotion zone.

(4) The active-duty list referred to in section 573(b) of this title includes the active-duty promotion list established by section 41a of title 14.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1501; amended Pub. L. 103–337, div. A, title V, §541(f)(7), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Par. (4). Pub. L. 103–337 added par. (4).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

CHAPTER 34—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reference to chapters 1205 and 1207.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1662(d)(3), Oct. 5, 1994, 108 Stat. 2991, amended analysis generally, substituting item 591 for former items 591 to 600a.

1992—Pub. L. 102–484, div. A, title V, §515(b), Oct. 23, 1992, 106 Stat. 2407, added item 596.

1986—Pub. L. 99–661, div. A, title V, §508(d)(1)(B), Nov. 14, 1986, 100 Stat. 3867, added item 600a.

1980—Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2849, substituted ''34'' for ''35'' as chapter number.

1958—Pub. L. 85–861, §1(11), Sept. 2, 1958, 72 Stat. 1440, added item 592 and struck out item 596 ''Officers: promotion''.

§591. Reference to chapters 1205 and 1207

Provisions of law relating to appointments of reserve officers other than warrant officers are set forth in chapter 1205 of this title (beginning with section 12201). Provisions of law relating to appointments and promotion of reserve warrant officers are set forth in chapter 1207 (beginning with section 12241).

(Added Pub. L. 103–337, div. A, title XVI, §1662(d)(3), Oct. 5, 1994, 108 Stat. 2991.)

PRIOR PROVISIONS

Prior sections 591 to 594, 595, and 596 were renumbered sections 12201 to 12204, 12208, and 12205 of this title, respectively.

Another prior section 596, act Aug. 10, 1956, ch. 1041, 70A Stat. 25, related to promotion of officers in the Reserve components, prior to repeal by Pub. L. 85–861, §36B(2), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 596a, 596b, 597 to 599, 600, and 600a were renumbered sections 12206, 12207, 12241 to 12243, 12209, and 12210 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

Sec.
601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.
[602. Repealed.]
603. Appointments in time of war or national emergency.
604. Senior joint officer positions: recommendations to the Secretary of Defense.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IV, §405(c)(2), Oct. 5, 1994, 108 Stat. 2745, added item 604.

1991—Pub. L. 102–190, div. A, title XI, §1113(d)(1)(B), Dec. 5, 1991, 105 Stat. 1502, struck out item 602 ''Warrant officers: temporary promotions'' and substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in item 603.

§601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position of importance and responsibility designated to carry that grade shall continue to hold that grade—

(1) while serving in that position of importance and responsibility;

(2) while under orders transferring him to another position designating to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days; and

(4) while awaiting retirement, beginning on the day he is relieved from the position designated to carry one of those grades and ending on the day before his retirement, but not for more than 60 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to

the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(d)(1) When an officer is recommended to the President for an initial appointment to the grade of lieutenant general or vice admiral, or for an initial appointment to the grade of general or admiral, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of that officer as a member of the Joint Staff and in other joint duty assignments. The Secretary of Defense shall submit the Chairman's evaluation to the President at the same time the recommendation for the appointment is submitted to the President.

(2) Whenever a vacancy occurs in a position within the Department of Defense that the President has designated as a position of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral or in an office that is designated by law to carry such a grade, the Secretary of Defense shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, § 523, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, § 403, Oct. 1, 1986, 100 Stat. 1031; Pub. L. 102–190, div. A, title V, § 502(a), Dec. 5, 1991, 105 Stat. 1354.)

AMENDMENTS

1991—Subsec. (b)(4). Pub. L. 102–190 substituted ''60 days'' for ''90 days''.

1986—Subsec. (d). Pub. L. 99–433 added subsec. (d).

1985—Subsec. (c)(2). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, which prior to amendment had provided that if the assignment of an officer who was serving in a position designated to carry the grade of general, admiral, lieutenant general, or vice admiral was terminated (1) by the assignment of such officer to another position designated to carry one of those grades, such officers would hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumed the other position, the grade that he had held on the day before the termination; (2) by the hospitalization of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day he was discharged from the hospital, but not for more than 180 days, the grade that he had held on the day before the termination; or (3) by the retirement of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he had held on the day before the termination.

1981—Subsec. (c)(2). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 502(b) of Pub. L. 102–190 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to temporary appointments of officers serving in grades above major general or rear admiral, see section 623 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 164, 720, 1370, 6325 of this title.

[§ 602. Repealed. Pub. L. 102–190, div. A, title XI, § 1113(a), Dec. 5, 1991, 105 Stat. 1502]

Section, Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849, related to temporary promotions of warrant officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 603. Appointments in time of war or national emergency

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

(1) The second anniversary of the appointment.

(2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.

(3) The date the person appointed is released from active duty.

(Added Pub. L. 96–513, title I, §105, Dec. 12. 1980, 94 Stat. 2850; amended Pub. L. 101–189, div. A, title VI, §653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102–190, div. A, title XI, §1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502.)

AMENDMENTS

1991—Pub. L. 102–190, §1113(d)(1)(A), substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in section catchline.

Subsec. (a). Pub. L. 102–190, §1113(b), struck out ''commissioned'' before ''officer grade in the Army'' and ''in warrant officer grades or'' before ''in grades above major general'' and inserted before period at end '', except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned''.

1989—Subsec. (f). Pub. L. 101–189 substituted ''terminates on the earliest of the following:'' for ''terminates—'' in introductory provisions, and made numerous amendments to style and punctuation. Prior to amendment, subsec. (f) read as follows: ''Unless sooner terminated, an appointment under this section terminates—

''(1) on the second anniversary of the appointment;

''(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or

''(3) on the date the person appointed is released from active duty;

whichever is earliest.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b) to make or vacate certain temporary commissioned appointments delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

§604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to subparagraph (A)) for consideration by the Secretary for recommendation to the President for appointment to that position.

(2) Whenever the Secretaries of the military departments are required to submit the names of officers under paragraph (1)(A), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that paragraph (and of any officer whose name the Chairman submits to the Secretary under paragraph (1)(B) for consideration for the same vacancy). The Chairman's evaluation shall primarily consider the performance of the officer as a member of the Joint Staff and in other joint duty assignments, but may include consideration of other aspects of the officer's performance as the Chairman considers appropriate.

(b) COVERED POSITIONS.—Subsection (a) applies to the following positions:

(1) Commander of a combatant command.

(2) Commander, United States Forces, Korea.

(3) Deputy commander, United States European Command, but only if the commander of that command is also the Supreme Allied Commander, Europe.

(c) EXPIRATION.—This section shall cease to be effective at the end of September 30, 1997.

(Added Pub. L. 103–337, div. A, title IV, §405(c)(1), Oct. 5, 1994, 108 Stat. 2745.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 525 of this title.

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

Subchapter		Sec.
I.	Selection Boards	611
II.	Promotions	619
III.	Failure of Selection for Promotion and Retirement for Years of Service	627
IV.	Continuation on Active Duty and Selective Early Retirement	637
V.	Additional Provisions Relating to Promotion, Separation, and Retirement	641

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1174, 3037, 5046, 5148, 5149, 5596, 5891, 5899, 5902, 5906, 6403, 8037, 14301, 14306, 14308, 14317 of this title.

SUBCHAPTER I—SELECTION BOARDS

Sec.
611. Convening of selection boards.
612. Composition of selection boards.
613. Oath of members of selection boards.
614. Notice of convening of selection boards.
615. Information furnished to selection boards.
616. Recommendations for promotion by selection boards.
617. Reports of selection boards.
618. Action on reports of selection boards.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title V, § 504(a)(2)(B), Dec. 5, 1991, 105 Stat. 1357, struck out ''; communications with boards'' after ''selection boards'' in item 614.

§ 611. Convening of selection boards

(a) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, may convene selection boards to recommend officers for continuation on active duty under section 637 of this title or for early retirement under section 638 of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION FROM GRADE OF COMMODORE TO GRADE OF REAR ADMIRAL (LOWER HALF)

Section 514(e) of Pub. L. 99–145 provided that:

''(1) An officer who on the day before the date of the enactment of this Act [Nov. 8, 1985] is serving in or has the grade of commodore shall as of the date of the enactment of this Act be serving in or have the grade of rear admiral (lower half).

''(2) An officer who on the day before the date of the enactment of this Act is on a list of officers selected for promotion to the grade of commodore shall as of the date of the enactment of this Act be considered to be on a list of officers selected for promotion to the grade of rear admiral (lower half).''

TRANSITION PROVISIONS COVERING 1980 AMENDMENTS BY DEFENSE OFFICER PERSONNEL MANAGEMENT ACT [PUB. L. 96–513]

Parts A to C of title VI of Pub. L. 96–513, as amended by Pub. L. 97–22, § 8(a)–(n), July 10, 1981, 95 Stat. 132–135; Pub. L. 97–86, title IV, § 405(d)(1), (2)(A), (e), (f), Dec. 1, 1981, 95 Stat. 1106, eff. Sept. 15, 1981; Pub. L. 98–525, title V, §§ 530–532, Oct. 19, 1984, 98 Stat. 2527; Pub. L. 100–456, div. A, title V, § 503, Sept. 29, 1988, 102 Stat. 1967, provided that:

''TITLE VI—TRANSITION PROVISIONS

''PART A—TRANSITION PROVISIONS RELATING ONLY TO THE ARMY AND AIR FORCE

''REGULAR OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

''SEC. 601. (a) Except as provided in sections 603 and 604, any regular officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981, except as otherwise provided in section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title] is on active duty and—

''(1) is serving in a temporary grade below lieutenant general that is higher than his regular grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below lieutenant general; or

''(3) is on a list of officers recommended for promotion to a regular grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(b) An officer referred to in clause (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such subsection to have been recommended for promotion shall be considered under chapter 36 of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the temporary grade in which he was serving on the effective date of this Act [Sept. 15, 1981] as if he were serving in his regular grade.

''(c) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in subsection (a)(1) who is promoted to the temporary grade in which he is serving on the effective date of this Act [Sept. 15, 1981] is the date of his temporary appointment in that grade.

''(d)(1) Any delay of a promotion of an officer referred to in clause (2) or (3) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) or (3) of subsection (a) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''RESERVE OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

''SEC. 602. (a)(1) Except as provided in subsection (b) and sections 605 and 606, any reserve officer of the

Army or Air Force who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list of his armed force and—

''(A) is serving in a temporary grade below lieutenant general that is higher than his reserve grade; or

''(B) is on a list of officers recommended for promotion to a temporary grade below lieutenant general that is the same as or higher than his reserve grade;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the reserve grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(2) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade to which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

''(b) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(1) is subject to placement on the active-duty list of his armed force;

''(2) is serving on active duty in a temporary grade; and

''(3) either holds a reserve grade higher than the temporary grade in which he is serving or is on a list of officers recommended for promotion to a reserve grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment.

''(c)(1) Any delay of a promotion of an officer referred to in clause (B) of subsection (a)(1) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion has been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (B) of subsection (a)(1) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''REGULAR OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

''SEC. 603. (a) An officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(1) holds the regular grade of first lieutenant, captain, or major; and

''(2) has been considered once but not recommended for promotion to the next higher regular grade by a selection board convened under the laws in effect on the day before the effective date of this Act,

shall, within one year after the effective date of this Act, be considered for promotion to the next higher regular grade by a selection board convened by the Secretary concerned under the laws in effect on the day before the effective date of this Act.

''(b)(1)(A) An officer described in subsection (a) who is recommended for promotion by the selection board which considers him pursuant to such subsection shall be considered to have been recommended for promotion to the next higher regular grade or the grade in which he is serving, whichever grade is higher, by a board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who was serving in the temporary grade equivalent to the grade to which he is considered to have been recommended for promotion and who is promoted to that grade is the date of his temporary appointment in that grade.

''(2) An officer described in subsection (a) who is not recommended for promotion by such board shall, unless continued on active duty under section 637 of such title, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws applicable on the day before the effective date of this Act [Sept. 15, 1981].

''REGULAR OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

''SEC. 604. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) holds the regular grade of first lieutenant, captain, or major; and

''(2) has twice failed of selection for promotion to the next higher regular grade,

shall, unless continued on active duty under section 637 of title 10, United States Code, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws in effect on the day before the effective date of this Act.

''RESERVE OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

''SEC. 605. (a) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(1) is on active duty and subject to placement on the active-duty list of his armed force;

''(2) holds the reserve grade of first lieutenant, captain, or major; and

''(3) has been considered once but not selected for promotion to the next higher reserve grade under section 3366, 3367, 8366, or 8367, as appropriate, of title 10, United States Code,

shall, unless sooner promoted, be considered again for promotion to that grade by a selection board convened under section 3366, 3367, 8366, or 8367, as appropriate, of such title.

''(b)(1) An officer described in subsection (a) who is serving on active duty in a temporary grade higher than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to the reserve grade equivalent to the temporary grade in which he is serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who is promoted to the reserve grade equivalent to the temporary grade in which he is serving on such date is the date of his temporary appointment in that grade.

''(2) An officer described in subsection (a) who is serving on active duty in a temporary grade equivalent to or lower than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to a reserve grade higher than the temporary grade in which he was serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 3366, 3367, 8366, or 8367, as appropriate, of such title. If such an officer is not ordered to active duty in his reserve grade, he shall while continuing on active duty retain such temporary grade and shall be considered for promotion

under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment to such grade.

''(3) An officer described in subsection (a) who is not recommended for promotion by the selection board which considers him pursuant to such subsection shall be governed by section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

''RESERVE OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

''SEC. 606. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was on active duty and subject to placement on the active-duty list of his armed force; and

''(2) held the reserve grade of first lieutenant, captain, or major; and

''(3) was considered to have twice failed of selection for promotion to the next higher reserve grade,

shall be governed by section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

''ENTITLEMENT TO SEVERANCE PAY OR SEPARATION PAY OF OFFICERS SEPARATED OR DISCHARGED PURSUANT TO THIS PART

''SEC. 607. (a) An officer who is discharged in accordance with section 603(b)(2) or 604 is entitled, at his election, to—

''(1) the severance pay to which he would have been entitled under the laws in effect before the effective date of this Act [Sept. 15, 1981]; or

''(2) separation pay, if eligible therefor, under section 1174(a) of title 10, United States Code, as added by this Act.

''(b) An officer who is separated in accordance with section 605(b)(3) or 606 is entitled, at his election, to—

''(1) readjustment pay under section 687 of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]; or

''(2) separation pay, if eligible therefor, under section 1174(c) of title 10, United States Code, as added by this Act.

''SPECIAL TENURE PROVISIONS FOR OFFICERS SERVING IN TEMPORARY GRADES OF BRIGADIER GENERAL AND MAJOR GENERAL

''SEC. 608. (a) Notwithstanding section 635 or 636 of title 10, United States Code, as added by this Act, but subject to subsection (b), a regular officer of the Army or Air Force—

''(1) who on the effective date of this Act [Sept. 15, 1981] is serving in or is on a list of officers recommended for promotion to the temporary grade of brigadier general or major general;

''(2) whose regular grade on such date is below such temporary grade; and

''(3) who is promoted pursuant to section 601(a) to the regular grade equivalent to such temporary grade,

shall be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act to officers in the permanent grade he held on such date. However, such an officer shall not be subject to a mandatory retirement date which is earlier than the first day of the month following the month of the thirtieth day after he completes 30 years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act.

''(b)(1) The Secretary of the Army or the Secretary of the Air Force, as appropriate, may convene selection boards under this section for the purpose of recommending from among officers described in subsection (a) officers to be selected to be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act [Sept. 15, 1981] to officers in the permanent grade to which such officers were promoted pursuant to section 601(a) or to officers in a lower permanent grade higher than the permanent grade held by such officers on the day before the effective date of this Act.

''(2) Upon the recommendation of a selection board convened under this section, the Secretary concerned may select officers described in subsection (a) to be subject to mandatory retirement in accordance with the provisions of section 3922, 3923, 8922, or 8923, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981], rather than in the manner described in subsection (a).

''(3) Any selection board convened under this section shall be convened in accordance with the provisions of section 3297 or 8297, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981].

''(c) This section does not apply to an officer who—

''(1) is sooner retired or separated under another provision of law;

''(2) is promoted to the permanent grade of brigadier general pursuant to section 601(a) and is subsequently promoted to the permanent grade of major general under chapter 36 of title 10, United States Code, as added by this Act; or

''(3) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''RIGHT OF MAJORS AND COLONELS TO COMPLETE YEARS OF SERVICE ALLOWED UNDER PRIOR LAW

''SEC. 609. (a)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(A) holds the regular grade of major; or

''(B) is on a list of officers recommended for promotion to the regular grade of major,

shall be retained on active duty until he completes twenty-one years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code (as in effect on the day before the effective date of this Act), and then be retired under the provisions of section 3913 or 8913 of such title (as in effect on the day before the effective date of this Act) on the first day of the month after the month in which he completes that service.

''(2) Paragraph (1) does not apply to an officer who—

''(A) is sooner retired or separated under another provision of law;

''(B) is promoted to the regular grade of lieutenant colonel; or

''(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''(b)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(A) holds the regular grade of colonel; or

''(B) is on a list of officers recommended for promotion to the regular grade of colonel,

shall be retired under section 3921 or 8921, as appropriate, of such title (as in effect on the day before the effective date of this Act).

''(2) Paragraph (1) does not apply to an officer who—

''(A) is sooner retired or separated under another provision of law;

''(B) is promoted to the regular grade of brigadier general; or

''(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''REGULAR OFFICERS WHOSE RETIREMENT HAS BEEN DEFERRED

''SEC. 610. A regular officer of the Army or Air Force serving on active duty on the effective date of this Act

[Sept. 15, 1981] whose retirement under chapter 367 or 867 of title 10, United States Code, has been deferred before that date—

''(1) under a provision of such chapter; or

''(2) by virtue of a suspension, under any provision of law, of provisions of such chapter which would otherwise require such retirement,

may continue to serve on active duty to complete the period for which his retirement was deferred or until such suspension is removed.

''PART B—TRANSITION PROVISIONS RELATING ONLY TO THE NAVY AND MARINE CORPS

''OFFICERS SERVING IN A TEMPORARY GRADE BELOW VICE ADMIRAL OR LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION

''SEC. 611. (a) Subject to subsection (b), any regular officer of the Navy or Marine Corps, and any reserve officer of the Navy and Marine Corps who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list, who on the effective date of this Act—

''(1) is serving on active duty in a temporary grade below vice admiral or lieutenant general that is higher than his permanent grade; or

''(2) is on a promotion list,

shall be considered to have been recommended for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be, by a board convened under section 611(a) of title 10, United States Code, as added by this Act.

''(b) This section does not apply to an officer—

''(1) serving in a temporary grade which, by its own terms, is limited in duration;

''(2) designated for limited duty in a grade to which he was appointed under section 5596 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981]; or

''(3) recommended for promotion or promoted to a grade under section 5787 of such title, as in effect before the effective date of this Act.

''(c)(1) Any delay of a promotion of an officer referred to in clause (2) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date, shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) of subsection (a) which was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''OFFICERS FAILED OF SELECTION FOR PROMOTION

''SEC. 612. (a) Except as provided in subsection (b), an officer of the Navy or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is considered to have failed of selection for promotion one or more times to a grade below the grade of captain, in the case of an officer of the Navy, or below the grade of colonel, in the case of an officer of the Marine Corps, is subject to chapter 36 of title 10, United States Code, as added by this Act, as if such failure or failures had occurred under the provisions of such chapter.

''(b) An officer who during fiscal year 1981—

''(1) failed twice of selection for promotion to the grade of either lieutenant or lieutenant commander, in the case of an officer in the Navy, or to either captain or major, in the case of an officer in the Marine Corps; and

''(2) had not previously failed of selection for promotion to that grade,

may not, because of such failures of selection, be involuntarily separated, involuntarily discharged, or retired under chapter 36 of title 10, United States Code, as added by this Act, before June 30, 1982, unless the officer so requests.

''RIGHT OF CERTAIN OFFICERS TO RETIRE UNDER PRIOR LAW

''SEC. 613. (a)(1) Subject to paragraph (2), an officer who on September 15, 1981—

''(A) holds the grade of lieutenant commander, commander, or captain in the Regular Navy or the grade of major, lieutenant colonel, or colonel in the Regular Marine Corps; or

''(B) is on a promotion list to any such grade,

shall be retired on the date provided under the laws in effect on September 14, 1981, except that an officer for whom no means can be established under the laws in effect on September 14, 1981, for computing creditable service in determining whether the officer is subject to involuntary retirement shall be retired under chapter 573 of title 10, United States Code, as in effect on September 14, 1981, on the basis of the years of service of such officer as determined under regulations prescribed under section 624(b).

''(2) This subsection does not apply to an officer—

''(A) removed from active duty under section 1184 of title 10, United States Code, as added by this Act;

''(B) promoted to a higher grade in the Regular Navy or Regular Marine Corps;

''(C) continued on active duty under section 637 of title 10, United States Code, as added by this Act; or

''(D) selected for early retirement under section 638 of title 10, United States Code.

''(b)(1) An officer of the Navy who on September 14, 1981—

''(A) has the grade of rear admiral in the Regular Navy; or

''(B) was on a promotion list to such grade,

shall be continued on active duty or retired in accordance with the laws in effect on September 14, 1981.

''(2) An officer of the Marine Corps who on September 14, 1981—

''(A) has the grade of brigadier general in the Regular Marine Corps; or

''(B) was on a promotion list to such grade,

shall be retired in accordance with the laws in effect on September 14, 1981.

''TRANSITION PROVISIONS TO NEW COMMODORE GRADE

''SEC. 614. (a)(1) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the upper half; or

''(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the upper half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of rear admiral.

''(2) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the lower half; or

''(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of commodore, but shall retain the title of rear admiral.

''(3) An officer who on the day before the effective date of this Act [Sept. 15, 1981] was on a list of officers recommended for promotion to the grade of rear admiral shall, upon promotion, hold the grade of commodore with the title of rear admiral.

''(b) An officer who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half; or

''(2) was on a list of officers recommended for promotion to the grade of rear admiral,

shall, on and after the effective date of this Act, or in the case of an officer on such a list, upon promotion to the grade of commodore, be entitled to wear the uniform and insignia of a rear admiral.

''(c) Except as otherwise provided by law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] held the grade of rear admiral on the retired list or the temporary disability retired list retains the grade of rear admiral and is entitled after such date to wear the uniform and insignia of a rear admiral. Such an officer, when ordered to active duty—

''(1) holds the grade and has the right to wear the uniform and insignia of a rear admiral; and

''(2) ranks among commissioned officers of the armed forces as and is entitled to the basic pay of—

''(A) a commodore, if his retired pay was based on the basic pay of a rear admiral of the lower half on the day before the effective date of this Act; or

''(B) a rear admiral, if his retired pay was based on the basic pay of a rear admiral of the upper half on the day before the effective date of this Act.

''(d)(1) An officer of the Navy who—

''(A) on the effective date of this Act [Sept. 15, 1981]—

''(i) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half or was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date; or

''(ii) was on a list of officers recommended for promotion to the grade of rear admiral; and

''(B) after such date holds the permanent grade of commodore pursuant to subsection (a),

shall not be subject to the provisions of chapter 36 of title 10, United States Code, as added by this Act, relating to selection for promotion and promotion to the next higher grade.

''(2) Officers to whom this subsection applies become entitled to hold the permanent grade of rear admiral under the circumstances prescribed for entitlement to the basic pay of a rear admiral of the upper half under the provisions of subsections (a) through (d) of section 202 of title 37, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]. For the purposes of this subsection, officers serving in the permanent grade of rear admiral or commodore in accordance with subsection (a) shall be considered as serving in the grade of rear admiral, as such grade was in effect on the day before the effective date of this Act.

''(e) Unless entitled to a higher grade under another provision of law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was serving on active duty; and

''(2) held the grade of rear admiral;

and who retires on or after the effective date of this Act, retires in the grade of rear admiral and is entitled to wear the uniform and insignia of a rear admiral. If such an officer is ordered to active duty after his retirement, he is considered, for the purposes of determining his pay, uniform and insignia, and rank among other commissioned officers, as having held the grade of rear admiral on the retired list on the day before the effective date of this Act.

''(f) A reserve officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was in an active status and was serving in the grade of rear admiral or was on a list of reserve officers recommended for promotion to the grade of rear admiral is not subject to subsection (f) of section 6389 of title 10, United States Code, as added by this Act.

''FEMALE OFFICERS

''SEC. 615. (a) Except as provided under subsection (c), each regular officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy or on the active list of the Marine Corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in the line of the Navy or in the Marine Corps, as appropriate, in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

''(b) Each officer of the Navy who on the effective date of this Act [Sept. 15, 1981] is serving in a staff corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in that corps in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

''(c) Any officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy under an appointment made under section 5590 of title 10, United States Code, and who meets the qualifications for appointment in a staff corps of the Navy may, request appointment in a staff corps and, with the approval of the Secretary of the Navy, be appointed in that staff corps. Any appointment under this subsection shall be in lieu of the reappointment of the officer under subsection (a).

''(d) Each officer reappointed in a staff corps pursuant to subsection (b) or appointed in a staff corps under subsection (c) shall be considered for all purposes as having been originally appointed in such staff corps in accordance with the provisions of title 10, United States Code, as amended by this Act.

''(e) Except as otherwise specifically provided by law, all provisions of law relating to appointment, promotion, separation, and retirement which are applicable to male officers of the Regular Navy or Regular Marine Corps, as appropriate, apply to officers reappointed pursuant to subsection (a) or (b) or appointed under subsection (c).

''(f)(1) As soon as practicable after completion of the appointments and reappointments provided for in subsections (a), (b), and (c), the name of each officer so appointed or reappointed shall be entered on the appropriate active-duty list of the Navy or the Marine Corps in a position among officers of her grade determined in accordance with regulations prescribed by the Secretary of the Navy. Such officers shall be placed on the appropriate active-duty list without change in their relative positions held on the lineal list or any list for promotion established for them while they were serving under an appointment under any provision of title 10, United States Code, repealed by this Act.

''(2) Any female officer—

''(A) who, by virtue of her date of rank and other considerations, would be placed on a list of officers eligible for consideration for promotion in a position senior to an officer who has failed of selection for promotion one or more times; and

''(B) who is considered to have failed of selection for promotion once or is considered to have never failed of selection for promotion,

shall, for purposes of determining her eligibility for consideration for promotion to the next higher grade, be considered with those officers who are considered to have failed of selection for promotion once, or who are considered never to have failed of selection for promotion, as the case may be.

''(3) A female officer who is considered to have failed of selection for promotion one or more times and whose position on the active-duty list is junior to the position of any male officer who is considered to have failed of selection for promotion a fewer number of times or not at all may not derive any advantage in the selection process by virtue of such position on the active-duty list.

''(g) Except as provided in section 638 of title 10, United States Code, as added by this Act, a regular officer of the Navy or Marine Corps appointed under section 5590 of such title who—

''(1) before the effective date of this Act [Sept. 15, 1981] had not twice failed of selection for promotion to the next higher grade; and

''(2) is not selected for promotion to a higher regular grade on or after such effective date,

may not be retired earlier than such officer would have been retired had this Act not been enacted.

''(h)(1) Any officer who—

''(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant in the Navy or a captain in the Marine Corps;

''(B) under section 6396(c) or 6401 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 13 years of active commissioned service; and

''(C) because of the enactment of this Act, is subject to discharge under section 632 of such title because such officer has twice failed of selection for promotion,

shall, if such officer has not completed 13 years of active commissioned service at the time otherwise prescribed for the discharge of such officer under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 13 years of active commissioned service.

''(2) Any officer who—

''(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant (junior grade) in the Navy or a first lieutenant in the Marine Corps;

''(B) under section 6396(d) or 6402 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 7 years of active commissioned service; and

''(C) because of the enactment of this Act, is subject to discharge under section 631 of such title because such officer has twice failed of selection for promotion,

shall, if that officer has not completed 7 years of active commissioned service at the time otherwise prescribed for such discharge under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 7 years of active commissioned service.

''LIMITED-DUTY OFFICERS

''SEC. 616. (a) An officer of the Regular Navy or Regular Marine Corps who on the effective date of this Act [Sept. 15, 1981] is an officer who was designated for limited duty before that date under section 5589 of title 10, United States Code, is subject to section 6383 of such title (as in effect on the day before the effective date of this Act), unless promoted to a higher permanent grade under chapter 36 of title 10, United States Code, as added by this Act.

''(b) Any female member of the Navy who on April 2, 1981, was appointed under section 591 or 5590 of title 10, United States Code, in the grade of ensign as an officer designated for limited duty may after September 14, 1981, be reappointed as an officer designated for limited duty under section 5596 of title 10, United States Code, as amended by this Act. A member so reappointed shall have a date of rank as an ensign of April 2, 1981, and shall have the same permanent pay grade and status as that member held on April 1, 1981.

''(c) An officer of the Navy or Marine Corps who on September 15, 1981, was an officer designated for limited duty under section 5589 of title 10, United States Code, and who on the date of the enactment of this subsection [Oct. 19, 1984] is serving in a temporary grade above the grade of lieutenant, in the case of an officer of the Navy, or captain, in the case of an officer of the Marine Corps, may be reappointed under section 5589 of title 10, United States Code (as in effect on or after September 15, 1981), in the same permanent grade and with the same date of rank held by that officer on the active-duty list immediately before such reappointment if he is otherwise eligible for appointment under that section.

''CERTAIN NAVY LIEUTENANTS HOLDING TEMPORARY APPOINTMENTS IN THE GRADE OF LIEUTENANT COMMANDER

''SEC. 617. Any officer who on the effective date of this Act [Sept. 15, 1981] holds a temporary appointment in the grade of lieutenant commander under section 5787d of title 10, United States Code, shall on and after such date be considered to be serving in such grade as if such appointment had been made under section 5721 of such title, as added by this Act.

''DIRECTOR OF BUDGET AND REPORTS OF THE NAVY

''SEC. 618. (a) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was serving on active duty and entitled to rank and privileges of retirement under section 5064 of title 10, United States Code, as in effect on the day before the effective date of this Act, shall have his rank and retirement privileges determined under the laws in effect on such date.

''CONTINGENCY AUTHORITY FOR NAVY PROMOTIONS UNDER PRIOR LAW

''SEC. 619. If necessary because of unforeseen circumstances, the Secretary of the Navy, during fiscal year 1982, may convene boards to select officers for promotion under chapters 545 and 549 of title 10, United States Code, as in effect on September 14, 1981, and officers so selected may be promoted in accordance with such chapters. An officer promoted to a higher grade under the authority of this section shall be subject to sections 613 and 629 as if he held that grade on September 14, 1981, and shall have a date of rank to be determined under section 741 of title 10, United States Code, as amended by this Act.

''RETENTION ON ACTIVE DUTY OF CERTAIN RESERVE LIEUTENANT COMMANDERS

''SEC. 620. Notwithstanding section 6389 of title 10, United States Code, an officer who on September 14, 1981—

''(1) holds the grade of lieutenant commander in the Naval Reserve;

''(2) is on active duty as the result of recall orders accepted subsequent to a break in active commissioned service;

''(3) is subject to placement on the active-duty list; and

''(4) is considered—

''(A) to have failed of selection for promotion to the grade of commander one or more times under chapter 545 of title 10, United States Code, as in effect on September 14, 1981; or

''(B) to have been later considered to have failed of selection for promotion to the grade of commander one or more times under chapter 36 of title 10, United States Code, as added by this Act,

may be retained on active duty by the Secretary of the Navy for such period as the Secretary considers appropriate.

''PART C—GENERAL TRANSITION PROVISIONS

''ESTABLISHMENT OF INITIAL ACTIVE-DUTY LISTS

''SEC. 621. (a)(1) Not later than 6 months after the effective date of this Act [Sept. 15, 1981], all officers of the Army, Navy, Air Force, and Marine Corps who are required to be placed on the active-duty list for their armed force under chapter 36 of title 10, United States Code, as added by this Act, shall be placed on such list with the same relative seniority which they held on the day before the effective date of this Act. An officer

placed on an active-duty list under this section shall be considered to have been placed on such list as of the effective date of this Act.

''(2) Regulations prescribed under section 620 of title 10, United States Code, as added by this Act, shall be applicable to the placement of officers on the active-duty list under paragraph (1).

''(b) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the Secretary of the military department concerned, in order to maintain the relative seniority among officers of the Army, Navy, Air Force, and Marine Corps as it existed on September 14, 1981, may adjust the date of rank of officers—

''(1) below the grade of brigadier general or commodore during the one-year period beginning on September 15, 1981; and

''(2) above the grade of colonel or, in the case of the Navy, captain until there are no longer any officers to whom section 614(d) is applicable.

''OFFICERS SERVING IN THE SAME TEMPORARY GRADE AND PERMANENT GRADE; DATE OF RANK

''SEC. 622. (a) Any officer of the Army, Navy, Air Force, or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is serving on active duty in a temporary grade which is the same as his permanent grade shall on such date be serving in such grade subject to this title and the amendments made by this Act. The date of rank of such officer in that grade is the date of his temporary appointment to that grade.

''OFFICERS SERVING IN GRADES ABOVE MAJOR GENERAL OR REAR ADMIRAL

''SEC. 623. (a) Any officer who on the day before the effective date of this Act [Sept. 15, 1981] held a temporary appointment in the grade of lieutenant general or general under section 3066, 5232, or 8066 of title 10, United States Code, or a temporary appointment in the grade of vice admiral or admiral under section 5231 of such title, shall on and after such date be considered to be serving in such grade as if such appointment had been made under section 601 of such title, as added by this Act.

''(b)(1) Any designation of a position as a position of importance and responsibility made by the President under section 3066 or 8066 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981], shall remain in effect, unless changed by the President, as a designation of such position as a position of importance and responsibility under section 601 of such title, as added by this Act.

''(2) Any position held by an officer under section 5231 or 5232 of title 10, United States Code, on the effective date of this Act [Sept. 15, 1981] shall, unless changed by the President, be deemed to be a position of importance and responsibility designated by the President under section 601 of title 10, United States Code.

''(c) Any officer who before the effective date of this Act [Sept. 15, 1981] served in the grade of lieutenant general, general, vice admiral, or admiral but was not serving in such grade on the day before the effective date of this Act shall for the purposes of section 1370(c) of title 10, United States Code, as added by this Act, be deemed to have held such position under an appointment made under section 601 of such title, as added by this Act.

''YEARS OF SERVICE FOR INVOLUNTARY RETIREMENT OR DISCHARGE

''SEC. 624. (a) In determining whether any officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] is subject to involuntary retirement or discharge under chapter 36 of title 10, United States Code, as added by this Act, the years of service of the officer for such purpose shall be computed by adding—

''(1) the amount of service creditable to such officer on the day before the effective date of this Act for the purpose of determining whether the officer is subject to involuntary retirement or discharge; and

''(2) all subsequent active commissioned service of such officer.

''(b) In the case of an officer subject to placement on the active-duty list on September 15, 1981, for whom no means of computing service creditable in determining whether the officer is subject to involuntary retirement or discharge existed under the law in effect on the day before the effective date of this Act [Sept. 15, 1981], the amount of creditable service of such officer for such purpose for the period before the effective date of this Act shall be determined under regulations prescribed by the Secretary of the military department concerned, except that such an officer may not be credited with an amount of service less than the amount of his active commissioned service.

''SAVINGS PROVISION FOR CONSTRUCTIVE SERVICE PREVIOUSLY GRANTED

''SEC. 625. (a) The amendments made by this Act do not affect the crediting of years of service to any person who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) had been credited with years of service upon an original appointment as an officer or after such an appointment; or

''(2) was participating in a program leading to an appointment as an officer in the Army, Navy, Air Force, or Marine Corps and the crediting of years of service.

''(b)(1) Any officer who on the effective date of this Act [Sept. 15, 1981] is an officer of the Army or Navy in the Medical or Dental Corps of his armed force, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service creditable to him for such purposes under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act.

''(2) Any person who on the day before the effective date of this Act [Sept. 15, 1981] was enrolled in the Uniformed Services University of the Health Sciences under chapter 104 of this title or the Armed Forces Health Professions Scholarship Program under chapter 105 of this title and who on or after the effective date of this Act graduates from such university or completes such program, as the case may be, and is appointed in one of the categories specified in paragraph (1) is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service that would have been credited to him under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act, had such clauses not been repealed by this Act.

''MISCELLANEOUS PROVISIONS RELATING TO YEARS OF SERVICE

''SEC. 626. (a) For the purpose of computing the years of service for pay and allowances of an officer of the Army, Navy, Air Force, or Marine Corps, including retired pay, severance pay, readjustment pay, separation pay, and basic pay, the total years of service of such officer shall be computed by adding to that service so creditable on the day before the effective date of this Act [Sept. 15, 1981] all subsequent service as computed under title 10, United States Code, as amended by this Act.

''(b) An officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the effective date of this Act [Sept. 15, 1981] and who is retired under section 1251 of title 10, United States Code, as added by this Act, shall be entitled to retired pay in an amount

equal to not less than 50 percent of the basic pay upon which his retired pay is based.

''(c) The service that an officer of the Army, Navy, Air Force, or Marine Corps has in a particular grade is the sum of—

''(A) the years, months, and days of service in that grade accrued under the laws in effect before the effective date of this Act [Sept. 15, 1981]; and

''(B) the years, months, and days of service in that grade accrued under the laws in effect on and after the effective date of this Act.

''TRANSITION TO OFFICER GRADE-STRENGTH TABLES DURING FISCAL YEAR 1981

''SEC. 627. For the fiscal year ending on September 30, 1981, the maximum number of officers authorized to be serving on active duty as of the end of such fiscal year in each of the grades of major, lieutenant colonel, and colonel for the Army, Air Force, and Marine Corps, and in each of the grades of lieutenant commander, commander, and captain for the Navy, under section 523 of title 10, United States Code, as added by this Act, is increased by the number equal to one-half the difference between (1) the actual number of officers of that armed force serving on active duty in that grade on September 30, 1980 (excluding officers in categories specified in subsection (b) of such section), and (2) the number specified in the table contained in such section for such armed force and grade based upon the total number of commissioned officers of such armed force on active duty on September 30, 1981 (excluding officers in categories specified in subsection (b) of such section).

''RIGHT OF COMMISSIONED OFFICERS WITH PERMANENT ENLISTED OR WARRANT OFFICER STATUS TO RETIRE IN HIGHEST ENLISTED OR WARRANT OFFICER GRADE HELD

''SEC. 628. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

''(1) on the day before the effective date of this Act [Sept. 15, 1981] had a permanent status as an enlisted member or as a warrant officer (or had a statutory right to be enlisted or to be appointed as a warrant officer) and was serving as an officer under a temporary appointment; and

''(2) on or after the effective date of this Act and before completing 10 years of commissioned service for purposes of retirement eligibility under section 3911, 6323, or 8911 of title 10, United States Code, completes 20 years of total service, as determined under section 1405 of such title,

is entitled to retire or transfer to the Fleet Reserve or Fleet Marine Corps Reserve in the highest grade he held as an enlisted member or a warrant officer.

''SAVINGS PROVISION FOR RETIRED GRADE FOR OFFICERS NOT SUBSEQUENTLY PROMOTED

''SEC. 629. In applying section 1370(a)(2) of title 10, United States Code, as added by this Act, to an officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] and who on or after the effective date of this Act is not promoted to a grade higher than the grade he held on the day before the effective date of this Act or, in the case of an officer who was on a list of officers recommended for promotion on such date, is not promoted to a grade higher than the grade to which he was recommended for promotion, 'two years' shall be substituted for 'three years'. The Secretary of the military department concerned may waive the requirements of this section and of section 1370(a)(2) of title 10, United States Code, as added by this Act, with respect to any officer described in the preceding sentence.

''EXEMPTION OF CERTAIN OFFICERS FROM SELECTIVE EARLY RETIREMENT PROVISIONS

''SEC. 630. An officer of the Army, Navy, Air Force, or Marine Corps who was recommended for continuation on the active list under the Act entitled 'An Act to provide improved opportunity for promotion for certain officers in the naval service, and for other purposes', approved August 11, 1959 (Public Law 86–155; 10 U.S.C. 5701 note), or under section 10 of the Act entitled 'An Act relating to the promotion and separation of certain officers of the regular components of the armed forces', approved July 12, 1960 (Public Law 86–616; 10 U.S.C. 3297 note), is not subject to section 638 of title 10, United States Code, as added by this Act, relating to selective early retirement.

''SAVINGS PROVISION FOR ENTITLEMENT TO READJUSTMENT PAY OR SEVERANCE PAY UNDER PRIOR PROVISIONS OF LAW

''SEC. 631. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

''(1) was on active duty (other than for training) on Sept. 14, 1981; and

''(2) after such date is involuntarily discharged or released from active duty under any provision of title 10, United States Code, as in effect after such date,

is entitled to receive any readjustment payment or severance pay to which he would have been entitled under laws in effect on Sept. 14, 1981, unless (in the case of a member discharged or released on or after the date of the enactment of the Department of Defense Authorization Act, 1985 [Oct. 19, 1984]) the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

''(b) If a member who is entitled to receive a readjustment payment or severance pay under subsection (a) is also eligible to receive separation pay under section 1174 of title 10, United States Code, as added by this Act, the member may not receive both the readjustment payment and severance pay under laws in effect on Sept. 14, 1981, and separation pay under such section, but shall elect which he will receive. If the number fails to make an election in a timely manner, he shall be paid the amount which is more favorable to him.

''OFFICERS ON ACTIVE DUTY IN GRADE ABOVE GENERAL

''SEC. 632. Section 1251 of title 10, United States Code, as added by this Act, relating to mandatory retirement for age, shall not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general.

''DEFINITIONS

''SEC. 633. For the purposes of this title:

''(1) The term 'officer' does not include warrant officers.

''(2) The term 'active-duty list' means the active-duty list established by the Secretary of the military department concerned pursuant to section 620 of title 10, United States Code, as added by this Act.

''SAVINGS PROVISION FOR RETIRED GRADE OF CERTAIN RESERVE OFFICERS

''SEC. 634. Unless entitled to a higher grade under any other provision of law, a member of the Army or Air Force who is a reserve officer and who—

''(1) is on active duty on September 14, 1981; and

''(2) after such date retires under section 3911 or 8911 of title 10, United States Code,

is entitled to retire in the reserve grade which he held or to which he had been selected for promotion on September 14, 1981.

''SAVINGS PROVISION FOR ORIGINAL APPOINTMENT IN CERTAIN GRADES UNDER EXISTING REGULATIONS

''SEC. 635. Any person who before September 15, 1981—

''(1) was selected for participation in a postbaccalaureate educational program leading to an appointment as a commissioned officer or had completed a postbaccalaureate program and was selected for appointment as a commissioned officer of the Army, Navy, Air Force, or Marine Corps;

''(2) under regulations of the Secretary of the military department concerned in effect on December 12,

1980, would have been appointed and ordered to active duty in a grade specified or determined in accordance with such regulations; and

''(3) had not been so appointed and ordered to active duty,

may be appointed and ordered to active duty in such grade with a date of rank and position on the active-duty list junior to that of all other officers of the same grade and competitive category serving on active duty.

''RETENTION IN GRADE OF CERTAIN RESERVE OFFICERS

''SEC. 636. A reserve officer of the Army, Navy, Air Force, or Marine Corps who on September 14, 1981—

''(1) is serving on active duty (A) under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System, or (B) under section 708 of title 32; and

''(2) is serving in a temporary grade or is selected for promotion to a temporary grade,

may continue to serve in or may be promoted to and serve in such grade until promoted to a higher grade, separated, or retired.

''SAVINGS PROVISION REGARDING DISCHARGE OF REGULAR OFFICERS

''SEC. 637. An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps who on September 14, 1981, was serving on active duty may not be discharged under section 630(1)(A) of title 10, United States Code, as added by this Act, on or after the day on which that officer completes three years of continuous service as a regular commissioned officer.

''REPAYMENT OF READJUSTMENT AND SEVERANCE PAY

''SEC. 638. Notwithstanding section 1174(h) of title 10, United States Code, as added by this Act, a person who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, becomes entitled to retired or retainer pay under any provision of title 10 or title 14, United States Code, shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981.

''SAVINGS PROVISION FOR PROMOTION CONSIDERATION OF CERTAIN RETIRED OFFICERS

''SEC. 639. Notwithstanding sections 619, 620, and 641(4) of title 10, United States Code, a retired officer serving on active duty on the date of the enactment of this section [Oct. 19, 1984] who on September 14, 1981, was on active duty as a retired officer recalled to active duty and who—

''(1) was eligible for consideration for promotion on that date; and

''(2) has served continuously on active duty since that date,

may be considered for promotion (under regulations prescribed by the Secretary of the military department concerned) by a selection board that convenes after the date of the enactment of this section as if he had been placed on the active-duty list pursuant to section 621 of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612, 614, 615, 616, 617, 618, 619, 622, 623, 624, 627, 628, 637, 638, 638a, 5150, 6383 of this title.

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the officers under consideration by the board. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary of the military department concerned, in his discretion, except that in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c) Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may

waive the preceding sentence in the case of any selection board of the Marine Corps.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97–22, §4(a), July 10, 1981, 95 Stat. 125; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, §402(a), Oct. 1, 1986, 100 Stat. 1030.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–433 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a)(2). Pub. L. 97–22, §4(a)(1), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), a selection board'' for ''A selection board'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22, §4(a)(2), inserted '', with the exact number of reserve officers to be determined by the Secretary of the military department concerned in his discretion'' after ''at least one reserve officer of that armed force'' and inserted ''who are eligible to serve on the board'' after ''the next higher grade''.

Subsec. (a)(4). Pub. L. 97–22, §4(a)(3), substituted ''Except as provided in paragraphs (2) and (3)'' for ''Except as provided in paragraph (3)'' and ''officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve'' for ''retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board'' and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97–22, §4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97–22, §4(a)(4), inserted ''convened under section 611(a) of this title'' after ''selection boards''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 406(f) of Pub. L. 99–433 provided that: ''The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 628, 12643 of this title.

§613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2851.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 628 of this title.

§614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 97–22, §4(b), July 10, 1981, 95 Stat. 126; Pub. L. 102–190, div. A, title V, §504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357.)

AMENDMENTS

1991—Pub. L. 102–190 struck out ''; communications with boards'' after ''selection boards'' in section catchline.

1981—Subsec. (a). Pub. L. 97–22 substituted ''which shall include the convening date of the board'' for '', the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board,''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 615 of this title.

§615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department con-

cerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) Information provided to a selection board in accordance with paragraph (2) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the selection board.

(4) Paragraphs (2) and (3) do not apply to the furnishing of appropriate administrative processing information to the selection board by administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(5) Information furnished to a selection board that is described in subparagraph (B), (C), or (D) of paragraph (2) may not be furnished to a later selection board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2).

(6)(A) Before information described in paragraph (2)(B) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the selection board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished with an appropriate summary of the information.

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of the Navy, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 99–433, title IV, § 402(b), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100–456, div. A, title V, § 501(a), Sept. 29, 1988, 102 Stat. 1965; Pub. L. 101–189, div. A, title V, § 519, Nov. 29, 1989, 103 Stat. 1444; Pub. L. 102–190, div. A, title V, § 504(a)(1), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title X, § 1052(7), Oct. 23, 1992, 106 Stat. 2499.)

AMENDMENTS

1992—Subsec. (b)(5). Pub. L. 102–484, §1052(7)(A), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (d). Pub. L. 102–484, §1052(7)(B), substituted ''subsection (b)'' for ''subsection (a)''.

1991—Pub. L. 102–190 added subsec. (a) and redesignated former subsecs. (a) to (d) as (b) to (e), respectively.

1989—Subsec. (d). Pub. L. 101–189 added subsec. (d).

1988—Subsec. (a)(4). Pub. L. 100–456, §501(a)(1), added cl. (4) and struck out former cl. (4) which read as follows: ''information relating to the needs of the armed force concerned for officers having particular skills;''.

Subsec. (c). Pub. L. 100–456, §501(a)(2), added subsec. (c).

1986—Pub. L. 99–433 designated existing provisions as subsec. (a), added par. (5), redesignated former par. (5) as (6), and added subsec. (b).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 504(e) of Pub. L. 102–190 provided that: ''The amendments made by this section [amending this section and sections 614, 616, 618, and 619 of this title] shall apply to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 501(e) of Pub. L. 100–456 provided that: ''The amendments made by this section [amending this section and sections 616 to 618 of this title] shall take effect 60 days after the date of the enactment of this Act [Sept. 29, 1988] and shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after that effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99–433, set out as a note under section 612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 616, 617, 618 of this title.

§616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

(d) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(e) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(f) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 100–456, div. A, title V, §501(b), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–190, div. A, title V, §504(b), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102–484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499.)

AMENDMENTS

1992—Pub. L. 102–484 substituted ''section 615(b)'' for ''section 615(a)''.

1991—Subsecs. (e), (f). Pub. L. 102–190 added subsecs. (e) and (f).

1988—Subsec. (a). Pub. L. 100–456 inserted ''(as noted in the guidelines or information furnished the board under section 615(a) of this title)'' after ''particular skills''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection

boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

§ 617. Reports of selection boards

(a) Each selection board convened under section 611(a) of this title shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing a list of the names of the officers it recommends for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to it under section 615 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 615(b) of this title) among those officers whose names were furnished to the selection board.

(b) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any regular officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required under chapter 60 of this title to show cause for his retention on active duty.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 100–456, div. A, title V, § 501(c), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–484, div. A, title X, § 1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title XVI, § 1623, Oct. 5, 1994, 108 Stat. 2961.)

AMENDMENT OF SUBSECTION (b)

Pub. L. 103–337, div. A, title XVI, §§ 1623, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, provided that, effective Oct. 1, 1996, subsection (b) of this section is amended by inserting ''or reserve'' after ''any regular'' and ''or 1411'' after ''chapter 60''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 substituted ''section 615(b)'' for ''section 615(a)''.

1988—Subsec. (a)(2). Pub. L. 100–456 inserted ''(as noted in the guidelines or information furnished the board under section 615(a) of this title)'' after ''concerned''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 616, 618, 628 of this title.

§ 618. Action on reports of selection boards

(a)(1) Upon receipt of the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title. Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (b) or (c), as appropriate.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.

(b)(1) After completing the requirements of subsection (a), the Secretary concerned, in the case of the report of a selection board that considered officers who are serving, or have served, in joint duty assignments, shall submit the report to the Chairman of the Joint Chiefs of Staff.

(2) The Chairman, in accordance with guidelines furnished to the Chairman by the Secretary of Defense, shall review the report for the purpose of determining if—

(A) the selection board acted consistent with the guidelines of the Secretary of Defense under section 615(c) of this title to ensure that selection boards give appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments; and

(B) the selection board otherwise gave appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments.

(3) After reviewing the report, the Chairman shall return the report, with his determinations and comments, to the Secretary concerned.

(4) If the Chairman determines that the board acted contrary to the guidelines of the Secretary of Defense under section 615(c) of this title or otherwise failed to give appropriate consideration to the performance of officers in joint duty assignments, the Secretary concerned may—

(A) return the report, together with the Chairman's determinations and comments, to the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) for further proceedings in accordance with subsection (a);

(B) convene a special selection board in the manner provided for under section 628 of this title; or

(C) take other appropriate action to satisfy the concerns of the Chairman.

(5) If, after completion of all actions taken under paragraph (4), the Secretary concerned and the Chairman remain in disagreement with respect to the report of a selection board, the Secretary concerned shall indicate such disagreement, and the reasons for such disagreement, as part of his transmittal of the report of the selection board to the Secretary of Defense under subsection (c). Such transmittal shall include any comments submitted by the Chairman.

(c)(1) After his final review of the report of a selection board, the Secretary concerned shall submit the report, with his recommendations thereon, to the Secretary of Defense for transmittal to the President for his approval or disapproval. The Secretary of Defense shall, before transmitting the report of a selection board to the President, take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman transmitted to him under subsection (b)(5). If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.

(2) If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title.

(d) The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(e) Upon approval by the President of the report of a selection board, the names of the officers recommended for promotion by the selection board (other than any name removed by the President) may be disseminated to the armed force concerned. If such names have not been sooner disseminated, such names (other than the name of any officer whose promotion the Senate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.

(f) Except as authorized or required by this section, proceedings of a selection board convened under section 611(a) of this title may not be disclosed to any person not a member of the board.

(g) If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from a report of a selection board and the recommendation is accompanied by information that was not presented to that selection board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 98–525, title V, §524(a), Oct. 19, 1984, 98 Stat. 2524; Pub. L. 99–433, title IV, §402(c), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100–456, div. A, title V, §501(d), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–190, div. A, title V, §504(c), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102–484, div. A, title X, §1052(8), (9), Oct. 23, 1992, 106 Stat. 2499.)

AMENDMENTS

1992—Subsec. (a)(1), (2). Pub. L. 102–484, §1052(8), substituted ''section 615(b)'' for ''section 615(a)''.

Subsec. (b)(2)(A), (4). Pub. L. 102–484, §1052(9), substituted ''section 615(c)'' for ''section 615(b)''.

1991—Subsec. (g). Pub. L. 102–190 added subsec. (g).

1988—Subsec. (a). Pub. L. 100–456, §501(d)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If, after reviewing the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned determines that the board has acted contrary to law or regulation, the Secretary shall return the report to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.''

Subsec. (c)(1). Pub. L. 100–456, §501(d)(2), struck out '', modification,'' after ''for his approval'' and inserted at end ''If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.''

1986—Subsec. (b). Pub. L. 99–433, §402(c)(1), (2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–433, §402(c)(1), (3), redesignated subsec. (b) as (c) and in par. (1) inserted provisions directing the Secretary of Defense, before transmitting the report, to take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman. Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 99–433, §402(c)(1), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (b)(2). Pub. L. 98–525 substituted ''If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title'' for ''The Secretary concerned may submit to a board of officers convened under section 1181 of this title the name of any officer who is named in the report of a selection board as having a record which indicates that the officer should be required to show cause for his retention on active duty''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99–433, set out as a note under section 612 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

Nothing in section 1 of Ex. Ord. No. 12396 deemed to delegate authority vested in President by subsec. (c) of this section to remove a name from a selection board report, see section 1(g) of Ex. Ord. No. 12396.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 628 of this title.

SUBCHAPTER II—PROMOTIONS

Sec.
619. Eligibility for consideration for promotion: time-in-grade and other requirements.
619a. Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions.
620. Active-duty lists.
621. Competitive categories for promotion.
622. Numbers to be recommended for promotion.
623. Establishment of promotion zones.
624. Promotions: how made.
625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half).
626. Acceptance of promotions; oath of office.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title IX, §931(c)(2), Nov. 30, 1993, 107 Stat. 1734, added items 619 and 619a and struck out former item 619 ''Eligibility for consideration for promotion''.

1985—Pub. L. 99–145, title V, §514(b)(4)(B), Nov. 8, 1985, 99 Stat. 628, substituted ''rear admiral (lower half)'' for ''commodore'' in item 625.

1981—Pub. L. 97–86, title IV, §405(b)(4)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodore'' for ''commodore admiral'' in item 625.

§ 619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a)(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in clause (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b)(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c)(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned—

(A) may, in accordance with standards and procedures prescribed by the Secretary of Defense in regulations which shall apply uniformly among the military departments, limit the officers to be considered by a selection

board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(C) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(3)(A) The Secretary of Defense may authorize the Secretaries of the military departments to preclude from consideration by selection boards for promotion to the grade of brigadier general or rear admiral (lower half) officers in the grade of colonel or, in the case of the Navy, captain who—

(i) have been considered and not selected for promotion to the grade of brigadier general or rear admiral (lower half) by at least two selection boards; and

(ii) are determined, in accordance with standards and procedures prescribed pursuant to subparagraph (B), as not being exceptionally well qualified for promotion.

(B) If the Secretary of Defense authorizes the Secretaries of the military departments to have the authority described in subparagraph (A), the Secretary shall prescribe by regulation the standards and procedures for the exercise of such authority. Those regulations shall apply uniformly among the military departments and shall include the following provisions:

(i) A requirement that the Secretary of a military department may exercise such authority in the case of a particular selection board only if the Secretary of Defense approves the exercise of that authority for that board.

(ii) A requirement that an officer may be precluded from consideration by a selection board under this paragraph only upon the recommendation of a preselection board of officers convened by the Secretary of the military department concerned and composed of at least three officers all of whom are serving in a grade higher than the grade of such officer.

(iii) A requirement that such a preselection board may not recommend that an officer be precluded from such consideration unless the Secretary concerned has given the officer advance written notice of the convening of such board and of the military records that will be considered by the board and has given the officer a reasonable period before the convening of the board in which to submit comments to the board.

(iv) A requirement that the Secretary convening such a preselection board shall provide general guidance to the board in accordance with standards and procedures prescribed by the Secretary of Defense in those regulations.

(v) A requirement that the preselection board may recommend that an officer be precluded from consideration by a selection board only on the basis of the general guidance provided by the Secretary of the military department concerned, information in the officer's official military personnel records that has been described in the notice provided the officer as required pursuant to clause (iii), and any communication to the board received from that officer before the board convenes.

(d) A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade—

(1) an officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section; or

(2) an officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2854; amended Pub. L. 97–22, §4(c), July 10, 1981, 95 Stat. 126; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §§525(a), (b), 529(a), Oct. 19, 1984, 98 Stat. 2524, 2525, 2526; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, §404, Oct. 1, 1986, 100 Stat. 1032; Pub. L. 100–180, div. A, title XIII, §§1305(a), 1314(b)(4), Dec. 4, 1987, 101 Stat. 1173, 1175; Pub. L. 100–456, div. A, title V, §515(a)(1), (b), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 102–190, div. A, title V, §504(d), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 103–160, div. A, title IX, §931(b), (c)(1), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103–337, div. A, title X, §1070(b)(7), Oct. 5, 1994, 108 Stat. 2857.)

AMENDMENTS

1994—Pub. L. 103–337 made technical correction to directory language of Pub. L. 103–160, §931(c)(1). See 1993 Amendment note below.

1993—Pub. L. 103–160, §931(c)(1), as amended by Pub. L. 103–337, inserted "; time-in-grade and other requirements" in section catchline.

Subsec. (e). Pub. L. 103–160, §931(b), struck out subsec. (e) which specified certain requirements for appointment to grade of brigadier general or rear admiral (lower half). See section 619a of this title.

1991—Subsec. (c)(2). Pub. L. 102–190, §504(d)(1), added subpar. (A), redesignated subpars. (C) and (D) as (B) and (C) respectively, and struck out former subpars. (A) and (B) which read as follows:

"(A) may, by regulation, prescribe procedures to limit the officers to be considered by a selection board—

"(i) from below the promotion zone; or

"(ii) in the case of a selection board to recommend officers for promotion to the grade of brigadier general or rear admiral (lower half),

to those officers who are determined to be exceptionally well qualified for promotion;

"(B) may, by regulation, prescribe criteria for determining which officers below the promotion zone or in the grades of colonel and, in the case of officers of the Navy, captain are exceptionally well qualified for promotion for the purposes of clause (A);".

Subsec. (c)(3). Pub. L. 102–190, §504(d)(2), added par. (3).

1988—Subsec. (e)(1). Pub. L. 100–456, §515(a)(1)(A), substituted "January 1, 1994" for "January 1, 1992" in second sentence.

Subsec. (e)(2)(D), (E). Pub. L. 100–456, §515(b)(1), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: "until January 1, 1992, in the case of an officer who served before October 1, 1986, in an assignment (other than a joint duty assignment) that involved significant experience in joint matters (as determined by the Secretary)."

Subsec. (e)(3)(C). Pub. L. 100–456, § 515(b)(2), substituted ''paragraph (2) (other than under subparagraph (A) of that paragraph)'' for ''paragraph (2)(B), (2)(C), or (2)(D)''.

Subsec. (e)(5). Pub. L. 100–456, § 515(a)(1)(B), added par. (5).

1987—Subsec. (e)(1). Pub. L. 100–180, § 1305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''An officer may not be selected for promotion to the grade of brigadier general or rear admiral (lower half) unless the officer has served in a joint duty assignment.''

Subsec. (e)(2)(D). Pub. L. 100–180, § 1314(b)(4), substituted ''October 1, 1986,'' for ''the date of the enactment of this subsection''.

1986—Subsec. (e). Pub. L. 99–433 added subsec. (e).

1985—Subsecs. (a)(2)(B), (c)(2)(A)(ii). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525, § 525(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), an officer'' for ''An officer'', and added par. (2).

Subsec. (c)(2)(D). Pub. L. 98–525, § 525(b), added subpar. (D).

Subsec. (d)(2). Pub. L. 98–525, § 529(a), struck out ''Navy or'' before ''Marine Corps'' and struck out ''lieutenant commander or'' before ''major''.

1981—Subsec. (a)(2)(B). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (c)(2)(A). Pub. L. 97–22, § 4(c)(1), struck out ''and'' after ''promotion;''.

Subsec. (c)(2)(A)(ii). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (c)(2)(B). Pub. L. 97–22, § 4(c)(2), substituted ''for the purposes of clause (A); and'' for the period at end of cl. (B).

Subsec. (c)(2)(C). Pub. L. 97–22, § 4(c)(3), added cl. (C).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 663 of this title.

§ 619a. Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may not be appointed to the grade of brigadier general or rear admiral (lower half) unless the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title).

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive subsection (a) in the following circumstances:

(1) When necessary for the good of the service.

(2) In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(3) In the case of—

(A) a medical officer, dental officer, veterinary officer, medical service officer, nurse, or biomedical science officer;

(B) a chaplain; or

(C) a judge advocate.

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment if—

(A) at least 180 days of that joint duty assignment have been completed on the date of the convening of that selection board; and

(B) the officer's total consecutive service in joint duty assignments within that immediate organization is not less than two years.

(5) In the case of an officer who served in a joint duty assignment that began before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(c) WAIVER TO BE INDIVIDUAL.—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a general or flag officer of the officer for whom the waiver is granted shall be in a joint duty assignment.

(e) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to brigadier general or, in the case of the Navy, rear admiral (lower half) is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(g) TRANSITION WAIVER AUTHORITIES.—(1)(A) Until January 1, 1999, the Secretary of Defense may waive subsection (a) in the case of an officer who served in an assignment (other than a joint duty assignment) that began before October 1, 1986, and that involved significant experience in joint matters (as determined by the Secretary) if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(B) Of the total number of appointments to the grades of brigadier general and rear admiral (lower half) for officers on the active-duty lists of the Army, Navy, Air Force, and Marine Corps during each of the years 1995 through 1999, the number in any such year that are made using a waiver under subparagraph (A) may not exceed the applicable percentage of such total determined as follows:

Year:	Applicable Percentage:
1995	20
1996	15
1997	10
1998	5.

(C) The provisions of subsections (c) and (e) apply to waivers under this paragraph in the same manner as to waivers under subsection (b).

(2) Until January 1, 1999, the Secretary of Defense may waive subsection (d) in the case of an officer granted a waiver of subsection (a) under the authority of subsection (b)(1).

(3)(A) An officer described in subparagraph (B) may not be appointed to the grade of lieutenant general or vice admiral until the officer completes a full tour of duty in a joint duty assignment.

(B) Subparagraph (A) applies to an officer—

(i) who is promoted after January 1, 1994, to the grade of brigadier general or rear admiral (lower half) and who receives a waiver of subsection (a) under the authority of paragraph (1) of this subsection; or

(ii) who receives a waiver of subsection (d) under the authority of paragraph (2) of this subsection.

(h) SPECIAL TRANSITION RULES FOR NUCLEAR PROPULSION OFFICERS.—(1) Until January 1, 1997, an officer of the Navy designated as a qualified nuclear propulsion officer may be appointed to the grade of rear admiral (lower half) without regard to subsection (a). An officer so appointed may not be appointed to the grade of rear admiral until the officer completes a full tour of duty in a joint duty assignment.

(2) Not later than March 1 of each year from 1994 through 1997, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation during the preceding calendar year of the transition plan developed by the Secretary pursuant to section 1305(b) of Public Law 100–180 (10 U.S.C. 619a note) with respect to service by qualified nuclear propulsion officers in joint duty assignments.

(Added Pub. L. 103–160, div. A, title IX, § 931(a), Nov. 30, 1993, 107 Stat. 1732.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

REPORT ON PLANS FOR COMPLIANCE

Section 931(d) of Pub. L. 103–160 provided that: "Not later than February 1, 1994, the Secretary of Defense shall certify to Congress that the Army, Navy, Air Force, and Marine Corps have each developed and implemented a plan for their officer personnel assignment and promotion policies so as to ensure compliance with the requirements of section 619a of title 10, United States Code, as added by subsection (a). Each such plan should particularly ensure that by January 1, 1999, the service covered by the plan shall have enough officers who have completed a full tour of duty in a joint duty assignment so as to permit the orderly promotion of officers to brigadier general or, in the case of the Navy, rear admiral (lower half) pursuant to the requirements of chapter 38 of title 10, United States Code."

REVISION OF TRANSITION PLAN

Section 931(f)(2) of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(8)(A), Oct. 5, 1994, 108 Stat. 2857, provided that: "The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall revise the transition plan developed pursuant to section 1305(b) of Public Law 100–180 [set out below] to take account of the amendments made by subsection (a) and by paragraph (1) of this subsection [enacting this section and amending provisions set out below]. The Secretary shall include with the next report of the Secretary after the date of the enactment of this Act [Nov. 30, 1993] under section 619a(h)(2) of title 10, United States Code, as added by subsection (a), a report on the actions of the Secretary in revising such transition plan."

Section 515(a)(3) of Pub. L. 100–456 provided that: "The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall revise the transition plan developed pursuant to section 1305(b) of Public Law 100–180 [set out below] to take account of the amendments made by paragraphs (1) and (2) [amending section 619 of this title and provisions set out below]. The Secretary shall include with the first report of the Secretary under section 619(e)(5) of title 10, United States Code, as added by paragraph (1)(B), a report on the actions of the Secretary in revising such transition plan."

PLAN FOR SERVICE BY QUALIFIED NUCLEAR PROPULSION OFFICERS IN JOINT DUTY ASSIGNMENTS BY JANUARY 1, 1997; IMPLEMENTATION; REPORT

Section 1305(b)–(d) of Pub. L. 100–180, as amended by Pub. L. 100–456, div. A, title V, § 515(a)(2), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 103–160, div. A, title IX, § 931(f)(1), (3), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103–337, div. A, title X, § 1070(b)(8), Oct. 5, 1994, 108 Stat. 2857, provided that:

"(b) TRANSITION PLAN.—(1) The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall develop and carry out a plan for ensuring that—

"(A) during the period before January 1, 1997, the maximum practicable number of officers of the Navy who are qualified nuclear propulsion officers serve in joint duty assignments and otherwise fulfill the provisions of chapter 38 of title 10, United States Code; and

"(B) by January 1, 1997, the maximum practicable number of qualified nuclear propulsion officers in the grade of captain have qualified for appointment to the grade of rear admiral (lower half) by completing a full tour of duty in a joint duty assignment.

''(2) The plan shall include milestones for each calendar year beginning with 1989 requiring that a progressively greater proportion of qualified nuclear propulsion officers fulfill the various requirements of chapter 38 of title 10, United States Code, and other provisions of law enacted by title IV of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433) [sections 401–406 of Pub. L. 99–433, see Tables for classification] so that after January 1, 1997, the nuclear propulsion community will be capable of complying with the requirements of that chapter without undue reliance on waivers granted by the Secretary of Defense.

''(c) IMPLEMENTATION.—The plan required to be developed under subsection (b) shall be implemented at the earliest practicable date, but in no event later than six months after the date of enactment of this Act [Dec. 4, 1987]. The Chairman of the Joint Chiefs of Staff shall monitor the implementation of such plan.

''(d) REPORT.—On the date on which the plan required to be developed under subsection (b) is implemented, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(1) a copy of the plan; and

''(2) a report explaining how the plan fulfills the objectives prescribed in subsection (b).''

§ 620. Active-duty lists

(a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).

(b) Officers shall be carried on the active-duty list of the armed force of which they are members in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on the active-duty list that he would have held if he had not received that appointment or assignment.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2855.)

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

Regulations prescribed under this section applicable to establishment of initial active-duty lists, see section 621(a) of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 5891, 14002 of this title.

§ 621. Competitive categories for promotion

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2856.)

§ 622. Numbers to be recommended for promotion

Before convening a selection board under section 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 615 of this title.

§ 623. Establishment of promotion zones

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 627 of this title.

§624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer; or

(D) a criminal proceeding in a Federal or State court is pending against the officer.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, or if the officer is acquitted of the charges brought against him, as the case may be, then unless action to delay an appointment has also been taken under subsection (d)(2) the officer shall be retained on the promotion list and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If the Secretary concerned later determines that the officer is qualified for promotion to such grade, the officer shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2857; amended Pub. L. 97–22, §4(d), July 10, 1981, 95 Stat. 126; Pub. L. 97–295, §1(8), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–525, title V, §526, Oct. 19, 1984, 98 Stat. 2525.)

AMENDMENTS

1984—Subsec. (d)(1), (2). Pub. L. 98–525 inserted provision for a determination by the Secretary concerned that the officer was unqualified for promotion for any part of the delay in the officer's promotion, with the inserted provision that if the Secretary made such a determination, the Secretary could adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considered appropriate under the circumstances.

1982—Subsec. (d)(4). Pub. L. 97–295 substituted ''this subsection'' for ''the subsection''.

1981—Subsec. (a)(1). Pub. L. 97–22, § 4(d)(1)(A), struck out ''or in the case of officers selected for promotion to the grade of first lieutenant or lieutenant (junior grade), when a list of officers selected for promotion is approved by the President,'' after ''by the President,''.

Subsec. (a)(2). Pub. L. 97–22, § 4(d)(1)(B), inserted provision that officers to be promoted to grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

Subsec. (c). Pub. L. 97–22, § 4(d)(2), substituted ''under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant'' for ''in the grade of first lieutenant or lieutenant (junior grade) under this section''.

Subsec. (d)(1). Pub. L. 97–22, § 4(d)(3)(A), (B), substituted ''Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed'' for ''The Secretary concerned may delay the appointment of an officer under this section'' in provisions preceding subpar. (A) and, in provisions following subpar. (D), inserted ''then unless action to delay an appointment has also been taken under subsection (d)(2)'' after ''as the case may be,''.

Subsec. (d)(2). Pub. L. 97–22, § 4(d)(3)(C), substituted ''Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which'' for ''the Secretary concerned may also delay the appointment of an officer to the next higher grade under this section in any case in which the Secretary finds that''.

Subsec. (d)(3). Pub. L. 97–22, § 4(d)(3)(D), (E), inserted '', unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable'' after ''grounds for the delay'' and struck out ''by the Secretary'' after ''the action taken''.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) to appoint officers in grades of first lieutenant and captain in Army, Air Force, and Marine Corps or in grades of lieutenant (junior grade) and lieutenant in Navy delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§ 1(c), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 626, 628, 12203 of this title.

§ 625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, or Marine Corps whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of colonel, if he is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if he is a regular officer, or the reserve grade of captain, if he is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2858; amended Pub. L. 97–86, title IV, § 405(b)(1), (4)(A), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in section catchline and subsecs. (a) and (c).

1981—Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in section catchline and subsecs. (a) and (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

§ 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under section 624 of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2858.)

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.
627. Failure of selection for promotion.
628. Special selection boards.
629. Removal from a list of officers recommended for promotion.
630. Discharge of regular commissioned officers with less than five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade).
631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade).
632. Effect of failure of selection for promotion: regular captains and majors of the Army, Air Force, and Marine Corps and regular lieutenants and lieutenant commanders of the Navy.
633. Retirement for years of service: regular lieutenant colonels and commanders.
634. Retirement for years of service: regular colonels and Navy captains.
635. Retirement for years of service: regular brigadier generals and rear admirals (lower half).
636. Retirement for years of service: regular major generals and rear admirals.

AMENDMENTS

1985—Pub. L. 99–145, title V, § 514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted ''rear admirals (lower half)'' for ''commodores'' in item 635.

1981—Pub. L. 97–86, title IV, § 405(b)(5)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodores'' for ''commodore admirals'' in item 635.

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone es-

tablished for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2859.)

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§628. Special selection boards

(a)(1) In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the officer as his record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain whose name was referred to it for consideration, the officer shall be considered to have failed of selection for promotion.

(b)(1) In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

(A) the action of the board which considered the officer was contrary to law or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the officer as his record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer whose name was referred to it for consideration, the officer incurs no additional failure of selection for promotion.

(c)(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each officer it recommends for promotion and certifying that the board has carefully considered the record of each officer whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title.

(d)(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer whose name was referred to it for consideration, such officer shall, as soon as practicable, be appointed to the next higher grade in accordance with subsections (b), (c), and (d) of section 624 of this title.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him.

(e) The provisions of section 613 of this title apply to members of special selection boards convened under this section.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2859; amended Pub. L. 98–525, title V, §527(a), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 102–190, div. A, title XI, §1131(4), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 102–484, div. A, title X, §1052(10), Oct. 23, 1992, 106 Stat. 2499.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–484 substituted ''section 573'' for ''section 558''.

1991—Subsec. (a)(1). Pub. L. 102–190 substituted ''section 573'' for ''section 558''.

1984—Subsecs. (a)(1), (b)(1). Pub. L. 98–525 substituted ''(composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned)'' for ''(composed in accordance with section 612 of this title)''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 618, 641 of this title.

§ 629. Removal from a list of officers recommended for promotion

(a) The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) If, after consideration of a list of officers approved for promotion by the President, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c)(1) An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, of if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2860.)

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) to remove name of any officer from a promotion list to any grade below commodore or brigadier general delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(b), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

§ 630. Discharge of regular commissioned officers with less then five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any regular officer on the active-duty list who—

(A) has less than five years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the regular grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in clause (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98–525, title XIV, §1405(11), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Par. (2). Pub. L. 98–525 substituted ''18-month'' for ''eighteen-month''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1174 of this title.

§ 631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of first lieutenant and has failed of selection for promotion to the regular grade of captain for the second time, and each officer of the Regular Navy who holds the regular grade of lieutenant (junior grade) and has failed of selection for promotion to the regular grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher regular grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the

board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98–525, title V, §525(c), Oct. 19, 1984, 98 Stat. 2525.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–525 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 619 of this title.

§632. Effect of failure of selection for promotion: regular captains and majors of the Army, Air Force, and Marine Corps and regular lieutenants and lieutenant commanders of the Navy

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(a) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of captain or major, and each officer of the Regular Navy who holds the regular grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher regular grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher regular grade shall—

(1) be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title.

§633. Retirement for years of service: regular lieutenant colonels and commanders

Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service. During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 98–525, title V, §529(b), title XIV, §1405(12), Oct. 19, 1984, 98 Stat. 2526, 2622; Pub. L. 102–484, div. A, title V, §504(a), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103–160, div. A, title V, §561(e), Nov. 30, 1993, 107 Stat. 1667.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Pub. L. 102–484 inserted at end ''During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies.''

1984—Pub. L. 98–525, §1405(12), substituted ''28'' for ''twenty-eight''.

Pub. L. 98–525, §529(b), substituted ''Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies'' for ''Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

§634. Retirement for years of service: regular colonels and Navy captains

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be re-

tired on the first day of the month after the month in which he completes 30 years of active commissioned service. During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title XIV, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–484, div. A, title V, § 504(b), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103–160, div. A, title V, § 561(e), Nov. 30, 1993, 107 Stat. 1667.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Pub. L. 102–484 inserted at end ''During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.''

1985—Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Pub. L. 98–525 substituted ''30'' for ''thirty''.

1981—Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

§ 635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 30 years of active commissioned service, whichever is later.

(Added Pub. L. 96–513, title I. § 105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97–86, title IV, § 405(b)(1), (5)(A), Dec. 1, 1981, 95 Stat. 1105, 1106; Pub. L. 98–525, title XIV, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, § 514(b)(1), (5)(A), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''rear admirals (lower half)'' for ''commodores'' in section catchline and ''rear admiral (lower half)'' for ''commodore'' in text.

1984—Pub. L. 98–525 substituted ''30'' for ''thirty''.

1981—Pub. L. 97–86 substituted ''commodores'' for ''commodore admirals'' in section catchline and ''commodore'' for ''commodore admiral'' in text.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

§ 636. Retirement for years of service: regular major generals and rear admirals

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 98–525, title XIV, § 1405(14), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Pub. L. 98–525 substituted ''35'' for ''thirty-five''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec.
637. Selection of regular officers for continuation on active duty.
638. Selective early retirement.
638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges.
639. Continuation on active duty to complete disciplinary action.
640. Deferment of retirement or separation for medical reasons.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title V, § 521(a)(2), Nov. 5, 1990, 104 Stat. 1561, added item 638a.

§ 637. Selection of regular officers for continuation on active duty

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, or Marine Corps, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633 or 634 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer's sixty-second birthday.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section 611(b) of this title is subject to the approval of the Secretary of the military department concerned. The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.

(d) For purposes of this section, a period of continuation on active duty under this section expires or is completed on the earlier of (1) the date originally established for the termination of such period, or (2) the date established for the termination of such period by any shortening of such period under section 638a of this title.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97–22, §4(e), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title XIV, §1405(15), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101–510, div. A, title V, §521(b)(1), Nov. 5, 1990, 104 Stat. 1561.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510, §521(b)(1)(A), inserted at end "The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title."

Subsecs. (d), (e). Pub. L. 101–510, §521(b)(1)(B), (C), added subsec. (d) and redesignated former subsec. (d) as (e).

1985—Subsec. (b)(2). Pub. L. 99–145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (a)(2). Pub. L. 98–525, §1405(15)(A), substituted "20" for "twenty".

Subsec. (a)(3). Pub. L. 98–525, §1405(15)(B), substituted "24" for "twenty-four".

1981—Subsec. (b)(1). Pub. L. 97–22, §4(e)(1), substituted "section 633 or 634" for "section 633, 634, 635, or 636".

Subsec. (b)(2). Pub. L. 97–86 substituted "commodore" for "commodore admiral".

Pub. L. 97–22, §4(e)(2), inserted provision that an officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, commodore admiral, major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned and struck out requirement that the deferral of the retirement of an officer subject to retirement under section 635 or 636 of this title serving in a grade above major general or rear admiral was subject to the needs of the service.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel manage-

ment put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 611, 632, 633, 634, 635, 636, 638a, of this title.

§ 638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a selection board convened under section 611(b) of this title may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in subparagraph (B)) shall include each officer on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(B) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 3911, 6323, or 8911 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(C) An officer not considered by a selection board convened under section 611(b) of this title by reason of subparagraph (B) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2864; amended Pub. L. 97–22, § 4(f), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 100–456, div. A, title V, § 504, Sept. 29, 1988, 102 Stat. 1967; Pub. L. 101–510, div. A, title V, § 521(b)(2), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 102–190, div. A, title V, § 503(a), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 103–160, div. A, title V, § 506, Nov. 30, 1993, 107 Stat. 1646.)

AMENDMENTS

1993—Subsec. (e)(2)(B). Pub. L. 103–160 inserted ''(i)'' after ''grade and competitive category'', inserted ''(ii)'' after ''of this title, or'', and struck out comma after ''any provision of law''.

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as pars. (1) and (2)(A), in par. (2)(A) inserted ''(except as provided in subparagraph (B))'' after ''under this section, such list'', and added subpars. (B) and (C).

1990—Subsec. (a)(3). Pub. L. 101–510, § 521(b)(2)(A), added par. (3).

Subsec. (b)(1). Pub. L. 101–510, § 521(b)(2)(B), inserted ''or section 638a of this title'' after ''under this section''.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

''(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

''(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

''(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

''(4) who holds the regular grade of major general or rear admiral and has served at least three and one-half years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.''

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' wherever appearing.

1981—Subsec. (a)(3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (a)(3), (4). Pub. L. 97–22 substituted ''three and one-half years of active duty'' for ''four years of active duty''.

Subsecs. (b), (c). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 611, 638a of this title.

§ 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the nine-year period beginning on October 1, 1990, to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times).

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years).

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Suspending section 638(c) of this title.

(4) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for

early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(d)(1) In the case of an action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(4). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of officers described in subsection (b)(4) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added Pub. L. 101–510, div. A, title V, § 521(a)(1), Nov. 5, 1990, 104 Stat. 1559; amended Pub. L. 102–190, div. A, title V, § 503(b), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title V, § 503, title LXIV, § 4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; Pub. L. 103–160, div. A, title V, § 561(b), Nov. 30, 1993, 107 Stat. 1667.)

REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (b)(4)(C), is section 4403 of Pub. L. 102–484, which is set out as a note under section 1293 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (b)(4)(C). Pub. L. 102–484, § 4403(g)(2), inserted ''(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)'' after ''any provision of law''.

Subsec. (c)(3). Pub. L. 102–484, § 503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102–190, § 503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.''

Subsec. (c). Pub. L. 102–190, § 503(b)(2), designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 638 of this title.

§ 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866.)

§ 640. Deferment of retirement or separation for medical reasons

The Secretary of the military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.
641. Applicability of chapter.

Sec.
642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
643. Chaplains: discharge or retirement upon loss of professional qualifications.
644. Authority to suspend officer personnel laws.
645. Definitions.
646. Consideration of performance as a member of the Joint Staff.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(5), Oct. 5, 1994, 108 Stat. 3013, struck out item 644 ''Authority to suspend officer personnel laws''. Section 1691(b)(1) of Pub. L. 103–337 provided that the repeal of section 644 is effective Oct. 1, 1996.

1984—Pub. L. 98–525, title XIII, §1301(d)(2), Oct. 19, 1984, 98 Stat. 2612, added item 646.

§641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 3038, 8038, 10211, 10301 through 10305, 10501, or 12402 of this title or section 708 of title 32;

(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 12304 of this title;

(F) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

(G) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy and the registrar, dean, and permanent professors at the United States Air Force Academy.

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 98–525, title IV, §414(a)(5), title V, §527(b), Oct. 19, 1984, 98 Stat. 2519, 2525; Pub. L. 99–433, title V, §531(a)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103–337, div. A, title XVI, §§1624, 1671(c)(5), Oct. 5, 1994, 108 Stat. 2961, 3014.)

AMENDMENT OF SECTION

Pub. L. 103–337, div. A, title XVI, §§1624, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, provided that, effective Oct. 1, 1996, this section is amended—

(1) by inserting ''(a)'' before ''Officers in the following''; and

(2) by adding at the end the following:

(b) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is ordered to active duty (whether voluntarily or involuntarily) during a war or national emergency and who would otherwise be placed on the active-duty list may be excluded from that list as determined by the Secretary concerned. Exclusion of an officer from the active-duty list as the result of action by the Secretary concerned under the preceding sentence shall expire not later than 24 months after the date on which the officer enters active duty under an order to active duty covered by that sentence.

AMENDMENTS

1994—Par. (1)(B). Pub. L. 103–337, §1671(c)(5)(A), substituted ''3038, 8038, 10211, 10301 through 10305, 10501, or 12402'' for ''175, 265, 3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038, or 8496''.

Par. (1)(C). Pub. L. 103–337, §1671(c)(5)(B), substituted ''12301(d)'' for ''672(d)''.

Par. (1)(E). Pub. L. 103–337, §1671(c)(5)(C), substituted ''12304'' for ''673b''.

1986—Par. (1)(B). Pub. L. 99–433 substituted ''3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038'' for ''3015, 3019, 3033, 3496, 5251, 5252, 8019, 8033''.

1984—Pub. L. 98–525, §527(b), substituted ''(other than section 640 and, in the case of warrant officers, section 628)'' for ''(other than section 640)'' in provisions preceding par. (1).

Par. (1)(C). Pub. L. 98–525, §414(a)(5)(A), struck out ''or under section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Par. (1)(G). Pub. L. 98–525, §414(a)(5)(B)–(D), added subpar. (G).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(5) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1624 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 620 of this title.

§642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay

(a) An officer who is discharged under this chapter is entitled, if eligible therefor, to separation pay under section 1174 of this title.

(b) An officer who is retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2867.)

§643. Chaplains: discharge or retirement upon loss of professional qualifications

Under regulations prescribed by the Secretary of Defense, a commissioned officer on the ac-

tive-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1174 of this title.

§ 644. Authority to suspend officer personnel laws

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of this chapter or of any other law relating to the promotion, involuntary retirement, or separation of officers of the Army, Navy, Air Force, or Marine Corps. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 102–190, div. A, title XI, § 1115, Dec. 5, 1991, 105 Stat. 1503.)

REPEAL OF SECTION

Pub. L. 103–337, div. A, title XVI, §§ 1622(b), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, provided that, effective Oct. 1, 1996, this section is repealed.

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§ 1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

AMENDMENTS

1991—Pub. L. 102–190 struck out ''commissioned'' before ''officers'' in first sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section to suspend operation of any law relating to promotion, involuntary retirement, or separation of commissioned officers of Army, Navy, Air Force, or Marine Corps delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure that actions taken under any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§ 2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

§ 645. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or rear admiral (lower half), for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade.

(2) The term ''officers above the promotion zone'' means a group of officers on an active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as those officers in the promotion zone for that competitive category; and

(C) are senior to the senior officer in the promotion zone for that competitive category.

(3) The term ''officers below the promotion zone'' means a group of officers on the active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as the officers in the promotion zone for that competitive category; and

(C) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §533(a), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–25, title VII, §701(i)(1), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Pars. (1) to (3). Pub. L. 102–25 inserted ''The term'' after par. designations and lowercased initial letter of quoted phrases.

1985—Par. (1)(A)(ii). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Par. (1)(A)(i)(II), (ii)(II). Pub. L. 98–525, §533(a)(1), inserted ''(other than after having been placed on that list after a selection from below the promotion zone)''.

Par. (1)(B). Pub. L. 98–525, §533(a)(2), inserted ''in the promotion zone'' after ''the junior officer'' and struck out ''in the promotion zone'' after ''higher grade''.

1981—Par. (1)(A)(ii). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

§646. Consideration of performance as a member of the Joint Staff

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall ensure that officer personnel policies of the Army, Navy, Air Force, and Marine Corps concerning promotion, retention, and assignment give appropriate consideration to the performance of an officer as a member of the Joint Staff.

(Added Pub. L. 98–525, title XIII, §1301(d)(1), Oct. 19, 1984, 98 Stat. 2612.)

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.
[652. Repealed.]
653. Minimum service requirement for certain flight crew positions.
654. Policy concerning homosexuality in the armed forces.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(6), Oct. 5, 1994, 108 Stat. 3013, struck out item 652 ''Ready Reserves: requirement of notification of change of status''.

1993—Pub. L. 103–160, div. A, title V, §571(a)(2), Nov. 30, 1993, 107 Stat. 1673, added item 654.

1989—Pub. L. 101–189, div. A, title VI, §634(a)(2), Nov. 29, 1989, 103 Stat. 1454, added item 653.

1978—Pub. L. 95–485, title IV, §405(d)(2), Oct. 20, 1978, 92 Stat. 1616, added item 652.

1958—Pub. L. 85–861, §33(a)(4)(A), Sept. 2, 1958, 72 Stat. 1564, substituted ''GENERAL SERVICE REQUIREMENTS'' for ''SERVICE REQUIREMENTS FOR RESERVES'' in chapter heading.

§651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)) shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Sept. 2, 1958, Pub. L. 85–861, §§1(12), 36B(3), 72 Stat. 1440, 1570; Nov. 2, 1966, Pub. L. 89–718, §5, 80 Stat. 1115; July 30, 1977, Pub. L. 95–79, title VIII, §803(a), 91 Stat. 333; Nov. 9, 1979, Pub. L. 96–107, title VIII, §805(b), 93 Stat. 813; Dec. 12, 1980, Pub. L. 96–513, title V, §511(18), 94 Stat. 2921; Sept. 24, 1983, Pub. L. 98–94, title X, §1022(b)(1), 97 Stat. 670.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (1st sentence, and less applicability to members of National Security Training Corps).	June 24, 1948, ch. 625, §4(d)(3) (less 4th sentence, and less applicability to members of National Security Training Corps); added June 19, 1951, ch. 144, §1(g) (last par., less 4th sentence, and less applicability to members of National Security Training Corps), 65 Stat. 79; July 9, 1952, ch. 608, §813, 66 Stat. 509.
651(b).	50 App.:454(d)(3) (2d sentence, and less applicability to members of National Security Training Corps).	
651(c).	50 App.:454(d)(3) (3d and last sentences).	

In subsection (a), the word ''male'' is inserted, since the source statute (Universal Military Training and Service Act (50 U.S.C. App. 451 et seq.)) applies only to male persons. The words ''subsequent to the date of enactment of this paragraph [June 19, 1951]'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed * * * in''. The words ''in the armed forces'' are substituted for the words ''on active training and service in the Armed Forces * * * and in a reserve component''. The last sentence is substituted for the words ''or in training in the National Security Training Corps''. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

In subsection (b), the words ''who is not a Reserve'' are inserted, since the eight year obligation for Reserves is covered by subsection (a). The words ''active duty'' are substituted for the words ''active training and service''. The last eight words are substituted for the words ''and shall serve therein for the remainder of the period which he is required to serve under this paragraph''. The words ''physically and mentally'' and 50 App.:454(d)(3) (last 15 words of 2d sentence) are omitted as surplusage.

In [former] subsection (c), the words ''who is released from active duty'' are inserted for clarity. The words ''shall become a member'' are substituted for the words ''it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to''. The words ''there is a vacancy'' are substituted for the words ''enlistment, enrollment, or appointment in, or assignment to''. 50 App.:454(d)(3) (last sentence) is omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (2d sentence).	Aug. 9, 1955, ch. 665, § 3(a) (last sentence), 69 Stat. 603.

In subsection (a), the word ''male'' is inserted, since the source statute applies only to male persons. The words ''subsequent to the date of enactment of the Reserve Forces Act of 1955'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed . . . in''. The last sentence is substituted for the words ''on active training and service . . . and in a reserve component''. The requirement of transfer to and service in a reserve component, after active training and service is covered by subsection (b) of this section. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–94 amended subsec. (a) generally, substituting a reference to service in the armed forces for a total initial period of not less than six years nor more than eight years under prescribed regulations for the prior reference to service in the armed forces for a total of six years.

1980—Subsec. (a). Pub. L. 96–513, substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'', and ''section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1))'' for ''section 456(d)(1) of title 50, appendix''.

1979—Subsec. (a). Pub. L. 96–107 struck out ''before his twenty-sixth birthday'' after ''force''.

1977—Subsec. (a). Pub. L. 95–79 struck out ''male'' after ''Each'' and ''after August 9, 1955,'' after ''who''.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to persons who enlisted under section 1013 of title 50 in the description of persons not required to serve in the armed forces for a total of six years.

1958—Subsec. (a). Pub. L. 85–861, § 1(12), restricted section to male persons who became members of the armed forces after Aug. 9, 1955, excluded persons enlisted under section 1013 of Title 50 or deferred under the next to last sentence of section 456(d)(1) of Title 50, Appendix, reduced from eight to six years the required period of service, required any part of such service that is not active duty or is active duty for training to be performed in a reserve component, and struck out provisions which permitted members of the armed forces to count service in the National Security Training Corps as if it were service in the armed forces for the purposes of this subsection.

Subsec. (c). Pub. L. 85–861, § 36B(3), repealed subsec. (c) which required members released from active duty to become members of an organized unit of a reserve component of an officers' training program.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(b)(2) of Pub. L. 98–94 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to persons who enter the Armed Forces 60 or more days after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable to individuals who become members of an Armed Force after Nov. 9, 1979, see section 805(c) of Pub. L. 96–107, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 803(b) of Pub. L. 95–79 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the seventh calendar month beginning after the month in which this Act is enacted [July 1977] and shall apply to any female person who becomes a member of an Armed Force on or after such day.''

CROSS REFERENCES

Appointment as officer in armed force instead of transfer to reserve component, see section 12208 of this title.

Enlistment in armed force instead of transfer to reserve component, see section 12104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174, 4348, 6959, 9348, 12104, 12208, 12645 of this title; title 14 section 182; title 37 section 308e; title 50 App. section 456.

[§ 652. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section, added Pub. L. 95–485, title IV, § 405(d)(1), Oct. 20, 1978, 92 Stat. 1616, related to Ready Reserve requirement of notification of change of status. See section 10205 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 653. Minimum service requirement for certain flight crew positions

(a) PILOTS.—The minimum service obligation of any member who successfully completes training in the armed forces as a pilot shall be 8 years, if the member is trained to fly fixed-wing jet aircraft, or 6 years, if the member is trained to fly any other type of aircraft.

(b) NAVIGATORS AND NAVAL FLIGHT OFFICERS.—The minimum service obligation of any member who successfully completes training in the armed forces as a navigator or naval flight officer shall be 6 years.

(c) DEFINITION.—In this section, the term ''service obligation'' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve required to be served after—

(1) completion of undergraduate pilot training, in the case of training as a pilot;

(2) completion of undergraduate navigator training, in the case of training as a navigator; or

(3) completion of undergraduate training as a naval flight officer, in the case of training as a naval flight officer.

(Added Pub. L. 101–189, div. A, title VI, § 634(a)(1), Nov. 29, 1989, 103 Stat. 1454; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(3), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title V, § 506(a), Oct. 23, 1992, 106 Stat. 2404.)

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–484, § 506(a)(1), substituted ''service obligation'' for ''active duty obligation''.

Subsec. (c). Pub. L. 102–484, § 506(a)(2), substituted ''the term 'service obligation' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty

for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve'' for ''the term 'active duty obligation' means the period of active duty''.

1990—Subsec. (a). Pub. L. 101–510, §1484(k)(3)(A), substituted ''or'' for ''and'' before ''6 years''.

Subsec. (c). Pub. L. 101–510, §1484(k)(3)(B), inserted a comma after first reference to ''training'' in pars. (1) and (2) and after first reference to ''naval flight officer'' in par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 506(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of November 29, 1989.''

EFFECTIVE DATE

Section 634(b) of Pub. L. 101–189 provided that:

''(1) Except as provided in paragraphs (2) and (3), section 653 of title 10, United States Code, as added by subsection (a)(1), shall apply to persons who begin undergraduate pilot training, undergraduate navigator training, or undergraduate naval flight officer training, as the case may be, after September 30, 1990.

''(2) Such section shall apply to persons who graduate from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the Coast Guard Academy after December 31, 1991, and to persons who satisfactorily complete the academic and military requirements of the Senior Reserve Officers' Training Corps program (provided for in chapter 103 of title 10, United States Code) after December 31, 1991.

''(3) The minimum service requirements provided for such section shall not apply in the case of any person who entered into an agreement with the Secretary concerned before October 1, 1990, and who is obligated under the terms of such agreement to serve on active duty for a period less than the applicable period specified in section 653 of such title.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(8) of title 10, United States Code.''

§654. Policy concerning homosexuality in the armed forces

(a) FINDINGS.—Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that—

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to

engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accomplished by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) ENTRY STANDARDS AND DOCUMENTS.—(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) REQUIRED BRIEFINGS.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

(2) separation of the member would not be in the best interest of the armed forces.

(f) DEFINITIONS.—In this section:

(1) The term ''homosexual'' means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms ''gay'' and ''lesbian''.

(2) The term ''bisexual'' means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term ''homosexual act'' means—

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).

(Added Pub. L. 103–160, div. A, title V, § 571(a)(1), Nov. 30, 1993, 107 Stat. 1670.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a)(10), is classified to chapter 47 (§ 801 et seq.) of this title.

IMPLEMENTATION OF SECTION; REGULATIONS; SAVINGS PROVISION; SENSE OF CONGRESS

Section 571(b)–(d) of Pub. L. 103–160 provided that:

''(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act [Nov. 30, 1993], the Secretary of Defense shall revise Department of Defense regulations, and issue such new regulations as may be necessary, to implement section 654 of title 10, United States Code, as added by subsection (a).

''(c) SAVINGS PROVISION.—Nothing in this section or section 654 of title 10, United States Code, as added by subsection (a), may be construed to invalidate any inquiry, investigation, administrative action or proceeding, court-martial, or judicial proceeding conducted before the effective date of regulations issued by the Secretary of Defense to implement such section 654.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the suspension of questioning concerning homosexuality as part of the processing of individuals for accession into the Armed Forces under the interim policy of January 29, 1993, should be continued, but the Secretary of Defense may reinstate that questioning with such questions or such revised questions as he considers appropriate if the Secretary determines that it is necessary to do so in order to effectuate the policy set forth in section 654 of title 10, United States Code, as added by subsection (a); and

''(2) the Secretary of Defense should consider issuing guidance governing the circumstances under which members of the Armed Forces questioned about homosexuality for administrative purposes should be afforded warnings similar to the warnings under section 831(b) of title 10, United States Code (article 31(b) of the Uniform Code of Military Justice).''

CHAPTER 38—JOINT OFFICER MANAGEMENT

Sec.
661. Management policies for joint specialty officers.
662. Promotion policy objectives for joint officers.
663. Education.
664. Length of joint duty assignments.
665. Procedures for monitoring careers of joint officers.
666. Reserve officers not on the active-duty list.
667. Annual report to Congress.
668. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 526 of this title.

§ 661. Management policies for joint specialty officers

(a) ESTABLISHMENT.—The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of

the Army, Navy, Air Force, and Marine Corps on the active-duty list who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their principal military occupational specialty) in such manner as the Secretary of Defense directs. For purposes of this chapter, officers to be managed by such policies, procedures, and practices are referred to as having, or having been nominated for, the ''joint specialty''.

(b) NUMBERS AND SELECTION.—(1) The number of officers with the joint specialty shall be determined by the Secretary. Such number shall be large enough to meet the requirements of subsection (d).

(2) Officers shall be selected for the joint specialty by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. The Secretaries of the military departments shall nominate officers for selection for the joint specialty. Nominations shall be made from among officers—

(A) who meet qualifications prescribed by the Secretary of Defense; and

(B) who—

(i) are senior captains or, in the case of the Navy, senior lieutenants; or

(ii) are serving in the grade of major or lieutenant commander or a higher grade.

(3) The authority of the Secretary of Defense under paragraph (2) to select officers for the joint specialty may be delegated only to the Deputy Secretary of Defense.

(c) EDUCATION AND EXPERIENCE REQUIREMENTS.—(1) An officer who is nominated for the joint specialty may not be selected for the joint specialty until the officer—

(A) successfully completes an appropriate program at a joint professional military education school; and

(B) after completing such program of education, successfully completes a full tour of duty in a joint duty assignment (as described in section 664(f) of this title (other than in paragraph (2) thereof)).

(2)(A) An officer (other than a general or flag officer) who has a military occupational specialty that is a critical occupational specialty involving combat operations (as designated by the Secretary of Defense) and who is nominated for the joint specialty may be selected for the joint specialty after successful completion of a full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title) and successful completion of a program under paragraph (1)(A).

(B) The Secretary may not for the purposes of this paragraph designate a military occupational specialty as a critical occupational specialty involving combat operations unless that occupational specialty is within the combat arms, in the case of the Army, or the equivalent, in the case of the Navy, Air Force, and Marine Corps. In determining for the purposes of this paragraph what military occupational specialties within the combat arms (or the equivalent) are critical, the Secretary shall designate as critical any military occupational specialty experiencing severe shortages of trained officers.

(3)(A) In the case of an officer who has completed both a program of education referred to in paragraph (1)(A) and a full tour of duty in a joint duty assignment (as described in section 664(f) of this title (other than in paragraph (2) thereof)) and is subsequently nominated for the joint specialty, the Secretary of Defense may waive the requirement in paragraph (1)(B) that the tour of duty in a joint duty assignment be performed after the officer completes the program of education if the Secretary determines that the waiver is necessary in the interests of sound personnel management.

(B) In the case of an officer who has completed two full tours of duty in a joint duty assignment (as described in section 664(f) of this title) and is subsequently nominated for the joint specialty, the Secretary may waive the requirement that the officer have successfully completed a program of education referred to in paragraph (1)(A) if the Secretary determines that—

(i) it would be impractical to require the officer to complete such a program at the current stage of the officer's career; and

(ii) the types of joint duty assignments completed by the officer have been of sufficient breadth to prepare the officer adequately for the joint specialty.

(C) A waiver under subparagraph (A) or (B) may be made only under unusual circumstances justifying deviation from the conditions established in paragraph (1) for selection of an officer for the joint specialty.

(D) The authority of the Secretary of Defense to grant a waiver under this paragraph may be delegated only to the Deputy Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer and in the case of a general or flag officer only under exceptional circumstances in which the waiver is necessary to meet a critical need of the armed forces, as determined by the Chairman of the Joint Chiefs of Staff. The total number of waivers granted under this paragraph for officers in the same pay grade during any fiscal year may not exceed 10 percent of the total number of officers in that pay grade selected for the joint specialty during that fiscal year.

(4) For purposes of this chapter, a school that is organized within, and operated by, a military department may not be construed to be a joint professional military education school.

(d) NUMBER OF JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above captain or, in the case of the Navy, lieutenant are filled at any time by officers who—

(A) have the joint specialty; or

(B) have been nominated for the joint specialty and—

(i) have successfully completed a program of education referred to in subsection (c)(1)(A); or

(ii) have a military occupational specialty that is designated under subsection (c)(2)(A) as a critical occupational specialty involving combat operations.

(2)(A) The Secretary shall designate not fewer than 1,000 joint duty assignment positions as

critical joint duty assignment positions. Such designation shall be made by examining each joint duty assignment position and designating under the preceding sentence those positions for which, considering the duties and responsibilities of the position, it is highly important that the occupant be particularly trained in, and oriented toward, joint matters.

(B) Until January 1, 1994, at least 80 percent of the positions designated by the Secretary under subparagraph (A) shall be held at all times by officers who have the joint specialty. On and after January 1, 1994, each position so designated may (subject to subparagraph (C)) be held only by an officer who has the joint specialty.

(C) The Secretary of Defense may, on a case-by-case basis, waive the requirement in the second sentence of subparagraph (B) with respect to a particular assignment of an officer to a position designated as a critical joint duty assignment position. The authority of the Secretary to make such a waiver may be delegated only to the Chairman of the Joint Chiefs of Staff.

(D) During the period beginning on October 1, 1992, and ending on January 1, 1993, the Secretary of Defense shall submit to Congress a report on the operation, to the date of the report, of the first sentence of subparagraph (B) and on the Secretary's projection for the use of the waiver authority provided under subparagraph (C), including the Secretary's estimate of the average annual number of waivers to be provided under subparagraph (C).

(3)(A) The Secretary shall ensure that, of those joint duty assignment positions that are filled by general or flag officers, a substantial portion are among those positions that are designated under paragraph (2) as critical joint duty assignment positions.

(B) The Secretary shall ensure that, of those positions designated under paragraph (2) as critical joint duty assignment positions, an appropriate portion are filled by officers with the joint specialty who were selected for the joint specialty under subsection (c)(2).

(4) Of the officers serving in joint duty assignment positions covered by paragraph (1) who are described in subparagraph (A) or (B) of that paragraph, not more than 25 percent at any time may be officers described in subparagraph (B)(ii) of that paragraph.

(e) CAREER GUIDELINES.—The Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish career guidelines for officers with the joint specialty. Such guidelines shall include guidelines for—

(1) selection;
(2) military education;
(3) training;
(4) types of duty assignments; and
(5) such other matters as the Secretary considers appropriate.

(f) TREATMENT OF CERTAIN SERVICE.—Any service by an officer in the grade of captain or, in the case of the Navy, lieutenant in a joint duty assignment shall be considered to be service in a joint duty assignment for purposes of all laws (including section 619(e)(1) of this title) establishing a requirement or condition with respect to an officer's service in a joint duty assignment.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1025; amended Pub. L. 100–180, div. A, title XIII, § 1301–1302(b), Dec. 4, 1987, 101 Stat. 1168, 1169; Pub. L. 100–456, div. A, title V, §§ 511, 512(a), 517(a), 518, Sept. 29, 1988, 102 Stat. 1968, 1971; Pub. L. 101–189, div. A, title XI, §§ 1113, 1122, Nov. 29, 1989, 103 Stat. 1554, 1556.)

AMENDMENTS

1989—Subsec. (c)(1)(B), (3)(A). Pub. L. 101–189, § 1113, substituted ''(as described in section 664(f) of this title (other than in paragraph (2) thereof))'' for ''(as described in section 664(f)(1) or (f)(3) of this title)''.

Subsec. (c)(4). Pub. L. 101–189, § 1122, added par. (4).

1988—Subsec. (c)(3)(D). Pub. L. 100–456, § 511, inserted ''for officers in the same pay grade'' after ''under this paragraph'', substituted ''10 percent'' for ''5 percent'', and inserted ''in that pay grade'' after ''numbers of officers''.

Subsec. (d)(2). Pub. L. 100–456, § 512(a), designated existing provisions as subpar. (A), struck out sentence at end which directed that each position so designated by the Secretary could be held only by an officer who had the joint specialty, and added subpars. (B) to (D).

Subsec. (d)(4). Pub. L. 100–456, § 517(a), substituted ''25 percent'' for ''one-third''.

Subsec. (f). Pub. L. 100–456, § 518, added subsec. (f).

1987—Subsec. (b)(3). Pub. L. 100–180, § 1301(a)(1), added par. (3).

Subsec. (c)(1)(B). Pub. L. 100–180, § 1301(b)(1), inserted ''(as described in section 664(f)(1) or (f)(3) of this title)'' after ''joint duty assignment''.

Subsec. (c)(2)(A). Pub. L. 100–180, § 1301(b)(2)(A)–(C), designated existing provisions as subpar. (A), substituted ''An officer (other than a general or flag officer) who has a military occupational specialty that is'' for ''An officer who has'' and ''full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title)'' for ''joint duty assignment of not less than two years'', and struck out provisions that an officer selected for the joint specialty complete generally applicable requirements for selection under par. (1)(B) as soon as practicable after such officer's selection.

Subsec. (c)(2)(B). Pub. L. 100–180, § 1301(b)(2)(D), added subpar. (B).

Subsec. (c)(3). Pub. L. 100–180, § 1301(b)(3), added par. (3).

Subsec. (d)(1). Pub. L. 100–180, § 1302(a)(1), added subpars. (A) and (B) and substituted ''by officers who—'' for ''by officers who have (or have been nominated for) the joint specialty.'' in introductory provisions.

Subsec. (d)(2) to (4). Pub. L. 100–180, § 1302(b), added pars. (2) to (4) and struck out former par. (2) which read as follows: ''The Secretary of Defense shall designate not fewer than 1,000 joint duty assignment positions as critical joint duty assignment positions. Each such position shall be held only by an officer with the joint specialty.''

STUDY OF DISTRIBUTION OF GENERAL AND FLAG OFFICER POSITIONS IN JOINT DUTY ASSIGNMENTS

Pub. L. 102–484, div. A, title IV, § 404, Oct. 23, 1992, 106 Stat. 2398, directed Secretary of Defense to conduct a study of whether joint organizations of Department of Defense are fully staffed with appropriate number of general and flag officers and, not later than one year after Oct. 23, 1992, submit a report to Congress.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Section 406(a)–(c) of Pub. L. 99–433, as amended by Pub. L. 100–456, div. A, title V, § 516, Sept. 29, 1988, 102 Stat. 1971, provided that:

''(a) JOINT DUTY ASSIGNMENTS.—(1) Section 661(d) of title 10, United States Code, shall be implemented as rapidly as possible and (except as provided under paragraph (2)) not later than October 1, 1989.

''(2) The first sentence of section 661(d)(2)(B) of such title shall apply with respect to positions designated

under the first sentence of section 661(d)(2)(A) of that title as critical joint duty assignment positions which become vacant after January 1, 1989.

''(b) JOINT SPECIALTY.—

''(1) INITIAL SELECTIONS.—(A) In making the initial selections of officers for the joint specialty under section 661 of title 10, United States Code (as added by section 401 of this Act), the Secretary of Defense may waive the requirement of either subparagraph (A) or (B) (but not both) of subsection (c)(1) of such section in the case of any officer in a grade above captain or, in the case of the Navy, lieutenant.

''(B) In applying such subparagraph (B) to the initial selections of officers for the joint specialty, the Secretary may in the case of any officer—

''(i) waive the requirement that a joint duty assignment be served after the officer has completed an appropriate program at a joint professional military education school;

''(ii) waive the requirement for the length of a joint duty assignment in the case of a joint duty assignment begun by an officer before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986; or

''(iii) consider as a joint duty assignment any tour of duty begun by an officer before October 1, 1986, that involved significant experience in joint matters (as determined by the Secretary) if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for his service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

''(C) A waiver under subparagraph (A) of this paragraph or under any provision of subparagraph (B) of this paragraph may only be made on a case-by-case basis.

''(D) The authority of the Secretary of Defense to grant a waiver under subparagraph (A) or (B) of this paragraph may be delegated only to the Deputy Secretary of Defense.

''(2) REQUIREMENT FOR HIGH STANDARDS.—In exercising the authority provided by paragraph (1), the Secretary of Defense shall ensure that the highest standards of performance, education, and experience are established and maintained for officers selected for the joint specialty.

''(3) SUNSET.—The authority provided by paragraph (1) shall expire on October 1, 1989.

''(c) CAREER GUIDELINES.—The career guidelines required to be established by section 661(e) of such title, the procedures required to be established by section 665(a) of such title, and the personnel policies required to be established by section 666 of such title (as added by section 401) shall be established not later than the end of the eight-month period beginning on the date of the enactment of this Act [Oct. 1, 1986]. The provisions of section 665(b) of such title shall be implemented not later than the end of such period.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 164, 664, 665, 667 of this title.

§662. Promotion policy objectives for joint officers

(a) QUALIFICATIONS.—The Secretary of Defense shall ensure that the qualifications of officers assigned to joint duty assignments are such that—

(1) officers who are serving on, or have served on, the Joint Staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force;

(2) officers who have the joint specialty are expected, as a group, to be promoted at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

(3) officers who are serving in, or have served in, joint duty assignments (other than officers covered in paragraphs (1) and (2)) are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

(b) REPORT.—The Secretary of Defense shall periodically (and not less often than every six months) report to Congress on the promotion rates of officers who are serving in, or have served in, joint duty assignments, especially with respect to the record of officer selection boards in meeting the objectives of clauses (1), (2), and (3) of subsection (a). If such promotion rates fail to meet such objectives, the Secretary shall include in the periodic report required by this subsection information on such failure and on what action the Secretary has taken or plans to take to prevent further failures.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1026; amended Pub. L. 100–456, div. A, title V, §513, Sept. 29, 1988, 102 Stat. 1969; Pub. L. 101–510, div. A, title XIII, §1311(3), Nov. 5, 1990, 104 Stat. 1669.)

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–510 substituted ''the Secretary shall include in the periodic report required by this subsection information on such failure and on'' for ''the Secretary shall immediately notify Congress of such failure and of''.

1988—Subsec. (a)(1), (3). Pub. L. 100–456 inserted ''to the next higher grade'' after ''promoted''.

§663. Education

(a) CAPSTONE COURSE FOR NEW GENERAL AND FLAG OFFICERS.—(1) Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other armed forces.

(2) Subject to paragraph (3), the Secretary of Defense may waive paragraph (1)—

(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

(B) when necessary for the good of the service;

(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

(3) The authority of the Secretary of Defense to grant a waiver under paragraph (2) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

(b) JOINT MILITARY EDUCATION SCHOOLS.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall periodically review and revise the curriculum of each school of the National Defense University (and of any other joint professional military education school) to enhance the education and training of officers in joint matters. The Secretary shall require such schools to maintain rigorous standards for the military education of officers with the joint specialty.

(c) OTHER PROFESSIONAL MILITARY EDUCATION SCHOOLS.—The Secretary of Defense shall require that each Department of Defense school concerned with professional military education periodically review and revise its curriculum for senior and intermediate grade officers in order to strengthen the focus on—

(1) joint matters; and

(2) preparing officers for joint duty assignments.

(d) POST-EDUCATION JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

(2)(A) The Secretary of Defense shall ensure that a high proportion (which shall be greater than 50 percent) of the officers graduating from a joint professional military education school who do not have the joint specialty shall receive assignments to a joint duty assignment as their next duty assignment after such graduation or, to the extent authorized in subparagraph (B), as their second duty assignment after such graduation.

(B) The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one-half of the officers subject to the joint duty assignment requirement in subparagraph (A) to be assigned to a joint duty assignment as their second (rather than first) assignment after such graduation from a joint professional military education school.

(e) DURATION OF PRINCIPAL COURSE OF INSTRUCTION AT ARMED FORCES STAFF COLLEGE.—(1) The duration of the principal course of instruction offered at the Armed Forces Staff College may not be less than three months.

(2) In this subsection, the term ''principal course of instruction'' means any course of instruction offered at the Armed Forces Staff College as Phase II joint professional military education.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1027; amended Pub. L. 101–189, div. A, title XI, § 1123(c)(1), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 102–190, div. A, title IX, § 912(a), Dec. 5, 1991, 105 Stat. 1452; Pub. L. 103–160, div. A, title IX, § 933(a), Nov. 30, 1993, 107 Stat. 1735.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''POST-EDUCATION DUTY ASSIGNMENTS.—The Secretary of Defense shall ensure that—

''(1) unless waived by the Secretary in an individual case, each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment; and

''(2) a high proportion (which shall be greater than 50 percent) of the other officers graduating from a joint professional military education school also receive assignments to a joint duty assignment as their next duty assignment.''

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (e). Pub. L. 101–189 added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 933(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to officers graduating from joint professional military education schools after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 912(b) of Pub. L. 102–190, as amended by Pub. L. 102–484, div. A, title IX, § 921, Oct. 23, 1992, 106 Stat. 2473, provided that: ''The amendment made by subsection (a)(2) [amending this section] shall not apply with respect to the Armed Forces Staff College until January 1, 1994.''

IMPLEMENTATION OF SUBSECTION (e)

Section 1123(c)(2) of Pub. L. 101–189 provided that: ''Subsection (e) of such section, as added by paragraph (1), shall be implemented by the Secretary of Defense not later than two years after the date of the enactment of this Act [Nov. 29, 1989].''

EDUCATION REQUIREMENTS; JOINT OFFICER MANAGEMENT PROGRAM

Section 406(d) of Pub. L. 99–433 provided that:

''(1) CAPSTONE COURSE.—Subsection (a) of section 663 of such title [10 U.S.C. 663(a)] (as added by section 401) shall apply with respect to officers selected in reports of officer selection boards submitted to the Secretary concerned after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].

''(2) REVIEW OF MILITARY EDUCATION SCHOOLS.—(A) The first review under subsections (b) and (c) of such section shall be completed not later than 120 days after the date of the enactment of this Act. The Secretary of Defense shall submit to Congress a report on the results of the review at each Department of Defense school not later than 60 days thereafter.

''(B) Such subsections shall be implemented so that the revised curricula take effect with respect to courses beginning after July 1987.

''(3) POST-EDUCATION DUTY ASSIGNMENTS.—Subsection (d) of such section shall take effect with respect to classes graduating from joint professional military education schools after January 1987.''

§ 664. Length of joint duty assignments

(a) GENERAL RULE.—The length of a joint duty assignment—

(1) for general and flag officers shall be not less than two years; and

(2) for other officers shall be not less than three years.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) in the case of any officer.

(c) INITIAL ASSIGNMENT OF OFFICERS WITH CRITICAL OCCUPATIONAL SPECIALTIES.—The Secretary may for purposes of section 661(c)(2) of this title authorize a joint duty assignment of less than the period prescribed by subsection (a), but not less than two years, without the requirement for a waiver under subsection (b) in the case of an officer—

(1) who is nominated for the joint specialty;

(2) who has a military occupational specialty designated under section 661(c)(2) of this title as a critical occupational specialty; and

(3) for whom such joint duty assignment is the initial joint duty assignment.

(d) EXCLUSIONS FROM TOUR LENGTH.—The Secretary of Defense may exclude the following service from the standards prescribed in subsection (a):

(1) Service in a joint duty assignment in which the full tour of duty in the assignment is not completed by the officer because of—

(A) retirement;

(B) release from active duty;

(C) suspension from duty under section 155(f)(2) or 164(g) of this title; or

(D) a qualifying reassignment (as described in subsection (g)(4)).

(2) Service in a joint duty assignment outside the United States or in Alaska or Hawaii which is less than the applicable standard prescribed in subsection (a).

(3) Service in a joint duty assignment in a case in which—

(A) the officer's tour of duty in that assignment brings the officer's cumulative service for purposes of subsection (f)(3) to the applicable standard prescribed in subsection (a); and

(B) the length of time served in that assignment (in any case other than an assignment which is described in subsection (g)(4)(B)) was not less than two years.

(e) AVERAGE TOUR LENGTHS.—(1) The Secretary shall ensure that the average length of joint duty assignments during any fiscal year (after fiscal year 1990), measured by the lengths of the joint duty assignments ending during that fiscal year, meets the standards prescribed in subsection (a).

(2) In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

(A) Service described in subsection (c), except that not more than 12½ percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

(B) Service described in subsection (d).

(f) FULL TOUR OF DUTY.—An officer shall be considered to have completed a full tour of duty in a joint duty assignment upon completion of—

(1) a joint duty assignment that meets the standards prescribed in subsection (a);

(2) a joint duty assignment under the circumstances described in subsection (c);

(3) cumulative service in joint duty assignments as described in subsection (g);

(4) a joint duty assignment outside the United States or in Alaska or Hawaii for which the normal accompanied-by-dependents tour of duty is prescribed by regulation to be at least two years in length, if the officer serves in the assignment for a period equivalent to the accompanied-by-dependents tour length (except that not more than 6 percent of all joint duty assignments may be considered to be under this paragraph at any time); or

(5) a joint duty assignment with respect to which the Secretary of Defense has granted a waiver under subsection (b), but only in a case in which the Secretary determines that the service completed by that officer in that duty assignment shall be considered to be a full tour of duty in a joint duty assignment.

(g) CUMULATIVE CREDIT.—(1) Cumulative service for purposes of subsection (f)(3) is service in joint duty assignments which totals in length not less than the applicable standard prescribed in subsection (a) and which includes at least one tour of duty in a joint duty assignment that—

(A) was performed outside the United States or in Alaska or Hawaii; or

(B) was terminated because of a qualifying reassignment (as described in paragraph (4)).

(2) In computing cumulative service of an officer in joint duty assignments for purposes of paragraph (1), a tour of duty of the officer in a joint duty assignment other than a tour of duty specified in subparagraph (A) or (B) of paragraph (1) may not be counted unless the officer served at least two years in the assignment. The prohibition on counting certain tours of duty in the preceding sentence does not apply to a joint duty assignment which follows a reassignment described in paragraph (4)(B).

(3) In computing the cumulative service of an officer in joint duty assignments for purposes of paragraph (1), a tour of duty in a joint duty assignment shall be excluded if the officer served less than 10 months in that assignment.

(4) For purposes of paragraph (1)(B), a qualifying reassignment is a reassignment of an officer from a joint duty assignment—

(A) for unusual personal reasons (including extreme hardship and medical conditions) beyond the control of the officer or the armed forces; or

(B) to another joint duty assignment immediately after—

(i) the officer was promoted to a higher grade if the reassignment was made because no joint duty assignment was available within the same organization that was commensurate with the officer's new grade; or

(ii) the officer's position was eliminated in a reorganization.

(h) CONSTRUCTIVE CREDIT.—(1) The Secretary of Defense may accord constructive credit in the case of an officer (other than a general or flag officer) who, for reasons of military necessity, is reassigned from a joint duty assignment within 60 days of meeting the tour length criteria prescribed in subsection (f)(1), (f)(2), (f)(4), or (g)(2). The amount of constructive service that may be credited to such officer shall be the amount sufficient for the completion of the applicable tour of duty requirement, but in no case more than 60 days.

(2) For the purpose of computing under subsection (e) the average length of joint duty as-

signments during a fiscal year, the amount of any constructive service credited under this subsection with respect to a joint duty assignment to be counted in that computation shall be excluded.

(3) This subsection shall not apply in the case of an officer who serves less than 10 months in the joint duty assignment.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1028; amended Pub. L. 100–180, div. A, title XIII, § 1303(a), Dec. 4, 1987, 101 Stat. 1170; Pub. L. 100–456, div. A, title V, §§ 514, 517(b), Sept. 29, 1988, 102 Stat. 1969, 1971.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–456, § 514(1)(A), substituted ''two years'' for ''three years''.

Subsec. (a)(2). Pub. L. 100–456, § 514(1)(B), substituted ''three years'' for ''three and one-half years''.

Subsec. (c)(1). Pub. L. 100–456, § 514(2), substituted ''is'' for ''has been'' and struck out ''before such assignment begins'' after ''specialty''.

Subsec. (d)(2). Pub. L. 100–456, § 514(3), inserted ''which is less than the applicable standard prescribed in subsection (a)'' after ''Hawaii''.

Subsec. (e)(2)(A). Pub. L. 100–456, § 517(b), substituted ''12½ percent'' for ''10 percent''.

Subsec. (f)(4), (5). Pub. L. 100–456, § 514(4), added pars. (4) and (5).

Subsec. (g)(3). Pub. L. 100–456, § 514(5), substituted ''shall be excluded if the officer served less than 10 months in that assignment'' for ''shall be excluded—

''(A) if the officer served less than 10 months in that assignment; and

''(B) to the extent that the assignment was served more than eight years before the date of computation of the cumulative service.''

Subsec. (h). Pub. L. 100–456, § 514(6), added subsec. (h).

1987—Subsec. (b). Pub. L. 100–180 added subsec. (b) and struck out former subsec. (b) which read as follows: ''The Secretary of Defense may waive subsection (a) in the case of any officer, but the Secretary shall ensure that the average length of joint duty assignments meets the standards prescribed in that subsection.''

Subsec. (c). Pub. L. 100–180 added subsec. (c) and struck out former subsec. (c), ''Certain officers with critical combat operations skills'', which read as follows: ''Joint duty assignments of less than the period prescribed by subsection (a), but not less than two years, may be authorized for the purposes of section 661(c)(2) of this title. Such an assignment may not be counted for the purposes of determining the average length of joint duty assignments under subsection (b).''

Subsec. (d). Pub. L. 100–180 added subsec. (d) and struck out former subsec. (d), ''Exception'', which read as follows:

''(1) Subsection (a) does not apply in the case of an officer who fails to complete a joint duty assignment as the result of—

''(A) retirement;

''(B) separation from active duty; or

''(C) suspension from duty under section 155(f)(2) or 164(g) of this title.

''(2) In computing the average length of joint duty assignments for purposes of this section, the Secretary of Defense shall exclude joint duty assignments not completed because of a reason specified in paragraph (1).''

Subsecs. (e) to (g). Pub. L. 100–180 added subsecs. (e) to (g).

JOINT DUTY CREDIT FOR CERTAIN DUTY PERFORMED DURING OPERATIONS DESERT SHIELD AND DESERT STORM

Pub. L. 103–160, div. A, title IX, § 932, Nov. 30, 1993, 107 Stat. 1735, provided that:

''(a) AUTHORITY TO GIVE JOINT DUTY CREDIT.—(1) An officer described in paragraph (2) may (subject to paragraph (3)) be given credit for service in a joint duty assignment pursuant to the provisions of section 933 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2476; 10 U.S.C. 664 note), notwithstanding the expiration (under subsection (e) of that section) of authority to give such credit under that section.

''(2) Paragraph (1) applies—

''(A) in the case of an officer who was recommended for such credit under subsection (a)(3) of that section before the expiration (under subsection (e) of that section) of authority to give such credit, but for whom such credit either was denied or was granted as credit for less than a full tour of duty in a joint duty assignment; and

''(B) in the case of an officer who did not submit a timely request for consideration for such credit.

''(3)(A) In the case of an officer described in paragraph (2)(A), joint duty credit may be granted by reason of this subsection only if the Secretary determines that the decision not to give the credit or not to give greater credit, as the case may be, to that officer was incorrect.

''(B) In the case of an officer described in paragraph (2)(B), joint duty credit may be granted by reason of this subsection only if the Secretary determines that the officer's ability to submit a timely request was impaired by involvement of the officer in an operational assignment and, as a result of the failure to submit such a timely request, the officer was not recommended for such credit.

''(b) DURATION OF AUTHORITY.—Subsection (a) expires at the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993].

''(c) CLARIFICATION OF INTENDED RELATIONSHIP BETWEEN CREDIT AND PROMOTIONS.—[Amended section 933(a)(1) of Pub. L. 102–484, below.]

''(2) Any joint duty service credit given to an officer under section 933(a)(1) of the National Defense Authorization Act for Fiscal Year 1993 before the date of the enactment of this Act [Nov. 30, 1993] may be applied to any provision of title 10, United States Code.''

Pub. L. 102–484, div. A, title IX, § 933, Oct. 23, 1992, 106 Stat. 2476, as amended by Pub. L. 103–35, title II, § 202(a)(9), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title IX, § 932(c)(1), Nov. 30, 1993, 107 Stat. 1735, provided that:

''(a) AUTHORITY TO GIVE JOINT DUTY CREDIT.—(1) The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, may give an officer who has completed service described in paragraph (2) credit for having completed a full tour of duty in a joint duty assignment, or credit countable for determining cumulative service in joint duty assignments, for the purposes of any provision of title 10, United States Code, notwithstanding the length of such service or whether that service is within the definition of 'joint duty assignment' in section 668 of title 10, United States Code.

''(2) Service referred to in paragraph (1) is service performed by an officer, any portion of which took place during the period beginning on August 2, 1990, and ending on February 28, 1991, in an assignment in the Persian Gulf combat zone that (as determined by the Secretary of Defense) provided significant experience in joint matters.

''(3) The Secretary, after consultation with the Chairman of the Joint Chiefs of Staff, may give credit for service in a joint duty assignment under paragraph (1) in the case of an officer recommended for such credit by the Chief of Staff of the Army (for officers in the Army), the Chief of Naval Operations (for officers in the Navy), the Chief of Staff of the Air Force (for officers in the Air Force), and the Commandant of the Marine Corps (for officers in the Marine Corps). Any such credit shall be granted by the Secretary on a case-by-case basis.

''(4) The Secretary of Defense shall establish uniform criteria for defining the standards to be used in determining whether to give an officer credit for service in

a joint duty assignment under paragraph (1). Such criteria shall be consistent with the congressional declarations of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401) and section 3 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 [Pub. L. 99–433] (10 U.S.C. 111 note). The criteria shall include standards to be used in determining whether to give an officer credit for completion of a full tour of duty, or credit countable for determining cumulative service, in a joint duty assignment. Such criteria may not result in the extension of eligibility for joint duty credit under this section to all officers in a specified category of officers that exists other than for reasons of this section.

''(b) INAPPLICABILITY OF CERTAIN REPORTING AND POLICY REQUIREMENTS.—(1) Officers for whom joint duty credit is granted pursuant to subsection (a) shall not be counted for the purposes of paragraphs (7), (8), (9), (11), and (12) of section 667 of title 10, United States Code, and subsections (a)(3) and (b) of section 662 of such title.

''(2) In the case of an officer for whom credit for completion of a full tour of duty in a joint duty assignment is granted pursuant to subsection (a), the Secretary of Defense may waive the requirement in paragraph (1)(B) of section 661(c) of title 10, United States Code, that, for purposes of nomination to the joint specialty under chapter 38 of such title, a full tour of duty in a joint duty assignment be performed after the officer completes a program of education referred to in paragraph (1)(A) of that section.

''(c) INFORMATION TO BE INCLUDED IN NEXT ANNUAL REPORT.—The joint specialty report of the Secretary of Defense under section 667 of title 10, United States Code, for fiscal year 1993 shall include the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

''(1) The number of officers granted credit for a joint duty assignment pursuant to subsection (a).

''(2) Of such officers, the number granted credit for a full tour of duty in a joint duty assignment pursuant to subsection (a) and the number granted credit for a joint duty assignment that is not treated as a full tour of duty.

''(3) Of the officers granted credit for a joint duty assignment pursuant to subsection (a), the number in each grade and each occupational specialty.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'joint matters' has the meaning given such term in section 668(a) of title 10, United States Code.

''(2) The term 'Persian Gulf combat zone' means the area designated by the President as the combat zone for Operation Desert Shield, Operation Desert Storm, and related operations for purposes of section 112 of the Internal Revenue Code of 1986 [26 U.S.C. 112].

''(3) The term 'joint specialty report' means that part of the annual report of the Secretary of Defense submitted to Congress under section 113(c) of title 10, United States Code, that is included in such report pursuant to section 667 of title 10, United States Code.

''(e) DURATION OF AUTHORITY.—The authority of the Secretary of Defense under this section expires at the end of the six-month period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

LENGTH OF JOINT DUTY ASSIGNMENTS

Section 406(e) of Pub. L. 99–433 provided that: ''Subsection (a) of section 664 of title 10, United States Code (as added by section 401), shall apply to officers assigned to joint duty assignments after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986]. In computing an average under subsection (b) of such section, only joint duty assignments to which such subsection applies shall be considered.''

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For waiver of the requirements of this section for the length of a joint duty assignment, see section 532(c) of Pub. L. 99–433, set out as a note under section 3033 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 164, 619a, 661, 3033, 5033, 5043, 8033 of this title.

§665. Procedures for monitoring careers of joint officers

(a) PROCEDURES.—(1) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish procedures for overseeing the careers of—

(A) officers with the joint specialty; and

(B) other officers who serve in joint duty assignments.

(2) Such oversight shall include monitoring of the implementation of the career guidelines established under section 661(e) of this title.

(b) FUNCTION OF JOINT STAFF.—The Secretary shall take such action as necessary to enhance the capabilities of the Joint Staff so that it can—

(1) monitor the promotions and career assignments of officers with the joint specialty and of other officers who have served in joint duty assignments; and

(2) otherwise advise the Chairman on joint personnel matters.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1028.)

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Procedures under subsec. (a) of this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, and provisions of subsec. (b) of this section to be implemented not later than the end of such period, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§666. Reserve officers not on the active-duty list

The Secretary of Defense shall establish personnel policies emphasizing education and experience in joint matters for reserve officers not on the active-duty list. Such policies shall, to the extent practicable for the reserve components, be similar to the policies provided by this chapter.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1028.)

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Personnel policies under this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§667. Annual report to Congress

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

(1) The number of officers selected for the joint specialty and their education and experience.

(2) The military occupational specialties within each of the armed forces that have been designated as critical occupational specialties under section 661(c)(2) of this title, separately identifying those specialties for which there is a severe shortage of trained officers, together with an explanation of how those specialties meet the criteria for that designation in section 661(c)(2)(B) of this title.

(3) The number of officers on the active-duty list with a military occupational specialty designated under section 661(c)(2) of this title as a critical occupational specialty who—

(A) have been nominated for the joint specialty;

(B) have been nominated for the joint specialty and are serving in a joint duty assignment;

(C) have completed a joint duty assignment and are attending an appropriate program at a joint professional military education school;

(D) have completed an appropriate program at a joint professional military education school;

(E) have been selected for the joint specialty; and

(F) have served, or are serving in, a second joint duty assignment after being selected for the joint specialty, with the number of such officers who have served, or are serving, in a critical joint duty assignment shown separately for general and flag officers, and for all other officers.

(4) For each fiscal year—

(A) the number of officers nominated for the joint specialty and, of those, the number who have a military occupational specialty designated as a critical occupational specialty; and

(B) a comparison of the number of officers who have the joint specialty who qualified for the joint specialty under section 661(c)(1) of this title with the number of officers who have the joint specialty who were selected for the joint specialty under section 661(c)(2) of this title.

(5) The promotion rate for officers considered for promotion from within the promotion zone who are serving on the Joint Staff compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade and the same competitive category, shown for all officers of the armed force and for officers serving on the headquarters staff of the armed force concerned.

(6) The promotion rate for officers with the joint specialty, compared in the same manner as specified in paragraph (5).

(7) The promotion rate for other officers who are serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(8) The promotion rate for officers considered for promotion from below the promotion zone, shown for officers serving on the Joint Staff, officers with the joint specialty, and other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(9) The promotion rate for officers considered for promotion from above the promotion zone, shown for officers serving on the Joint Staff, officers with the joint specialty, and other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(10) An analysis of assignments of officers after selection for the joint specialty.

(11) The average length of tours of duty in joint duty assignments—

(A) for general and flag officers, shown separately for assignments to the Joint Staff and other joint duty assignments; and

(B) for other officers, shown separately for assignments to the Joint Staff and other joint duty assignments.

(12) The number of times, in the case of each category of exclusion, that service in a joint duty assignment was excluded in computing the average length of joint duty assignments.

(13) In any case in which the information under paragraphs (5) through (9) shows a significant imbalance between officers serving in joint duty assignments or having the joint specialty and other officers, a description of what action has been taken (or is planned to be taken) by the Secretary to correct the imbalance.

(14) An analysis of the extent to which the Secretary of each military department is providing officers to fill that department's share (as determined by law or by the Secretary of Defense) of Joint Staff and other joint duty assignments, including the reason for any significant failure by a military department to fill its share of such positions and a discussion of the actions being taken to correct the shortfall.

(15) The number of times a waiver authority was exercised under this chapter (or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments) and in the case of each such authority—

(A) whether the authority was exercised for a general or flag officer;

(B) an analysis of the reasons for exercising the authority; and

(C) the number of times in which action was taken without exercise of the waiver authority compared with the number of times waiver authority was exercised (in the case of each waiver authority under this chapter or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments).

(16) During the period of the applicability of the first sentence of subparagraph (B) of section 661(d)(2) of this title, information on critical positions not filled by officers with the joint specialty, including—

(A) a listing by organization of the joint duty assignment positions which were not filled by officers with the joint specialty;

(B) an explanation of the reasons such positions were not filled by officers with the joint specialty, described by the categories of such reasons; and

(C) the percentage of critical joint duty assignment positions held by officers who have the joint specialty.

(17) With regard to each time the principal course of instruction at the Armed Forces Staff College is offered—

(A) the number of officers selected to attend that course who did not first complete while in residence at a professional military education school operated by a military department the principal course of instruction offered at that school;

(B) the number of those officers as a percentage of all officers who attended that course of instruction at the Armed Forces Staff College;

(C) a description of the different reasons why officers were selected to attend that course without first attending the principal course of instruction offered at a professional military education school operated by a military department; and

(D) the number of officers so selected for each such reason.

(18) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §1304(a), Dec. 4, 1987, 101 Stat. 1172; Pub. L. 100–456, div. A, title V, §512(b), Sept. 29, 1988, 102 Stat. 1968; Pub. L. 101–189, div. A, title XI, §1123(d), Nov. 29, 1989, 103 Stat. 1557.)

AMENDMENTS

1989—Pars. (17), (18). Pub. L. 101–189 added par. (17) and redesignated former par. (17) as (18).

1988—Pars. (16), (17). Pub. L. 100–456 added par. (16) and redesignated former par. (16) as (17).

1987—Par. (2). Pub. L. 100–180, §1304(a)(1), (2), added par. (2) and redesignated former par. (2) as (5).

Par. (3). Pub. L. 100–180, §1304(a)(1), (2), added par. (3) and redesignated former par. (3) as (6).

Par. (4). Pub. L. 100–180, §1304(a)(1), (2), added par. (4) and redesignated former par. (4) as (7).

Par. (5). Pub. L. 100–180, §1304(a)(1), redesignated former par. (2) as (5) and former par. (5) as (8).

Par. (6). Pub. L. 100–180, §1304(a)(1), (3), redesignated former par. (3) as (6) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (6) redesignated (10).

Par. (7). Pub. L. 100–180, §1304(a)(1), (3), redesignated former par. (4) as (7) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (7) redesignated (11).

Par. (8). Pub. L. 100–180, §1304(a)(1), (3), redesignated former par. (5) as (8) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (8) redesignated (13).

Par. (9). Pub. L. 100–180, §1304(a)(1), (4), added par. (9) and redesignated former par. (9) as (14).

Par. (10). Pub. L. 100–180, §1304(a)(1), redesignated former par. (6) as (10). Former par. (10) redesignated (16).

Par. (11). Pub. L. 100–180, §1304(a)(1), redesignated former par. (7) as (11).

Par. (12). Pub. L. 100–180, §1304(a)(5), added par. (12).

Par. (13). Pub. L. 100–180, §1304(a)(1), (6), redesignated former par. (8) as (13) and substituted ''paragraphs (5) through (9)'' for ''paragraphs (2) through (5)''.

Par. (14). Pub. L. 100–180, §1304(a)(1), redesignated former par. (9) as (14).

Par. (15). Pub. L. 100–180, §1304(a)(7), added par. (15).

Par. (16). Pub. L. 100–180, §1304(a)(1), redesignated former par. (10) as (16).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1304(b) of Pub. L. 100–180 provided that: ''Paragraphs (3) and (4) of section 667 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1987.''

ADDITIONAL INFORMATION TO BE INCLUDED IN FIVE ANNUAL JOINT OFFICER POLICY REPORTS AFTER NOVEMBER 30, 1993

Pub. L. 103–160, div. A, title IX, §931(e), Nov. 30, 1993, 107 Stat. 1734, provided that: ''The Secretary of Defense shall include as part of the information submitted to Congress pursuant to section 667 of title 10, United States Code, for each of the next five years after the date of the enactment of this Act [Nov. 30, 1993] the following:

''(1) The degree of progress made toward meeting the requirements of section 619a of title 10, United States Code.

''(2) The compliance achieved with each of the plans developed pursuant to subsection (d) [set out as a note under section 619a of this title].''

§668. Definitions

(a) JOINT MATTERS.—In this chapter, the term ''joint matters'' means matters relating to the integrated employment of land, sea, and air forces, including matters relating to—

(1) national military strategy;

(2) strategic planning and contingency planning; and

(3) command and control of combat operations under unified command.

(b) JOINT DUTY ASSIGNMENT.—(1) The Secretary of Defense shall by regulation define the term ''joint duty assignment'' for the purposes of this chapter. That definition shall be limited to assignments in which the officer gains significant experience in joint matters and shall exclude—

(A) assignments for joint training or joint education; and

(B) assignments within an officer's own military department.

(2) The Secretary shall publish a list showing—

(A) the positions that are joint duty assignment positions under such regulation and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions; and

(B) of the positions listed under subparagraph (A), those that are critical joint duty assignment positions and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions.

(c) CLARIFICATION OF ''TOUR OF DUTY''.—For purposes of this chapter, a tour of duty in which an officer serves in more than one joint duty assignment within the same organization without a break between such assignments shall be considered to be a single tour of duty in a joint duty assignment.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §§1302(c)(1), 1303(b), Dec. 4, 1987, 101 Stat. 1170, 1172; Pub. L. 100–456, div. A, title V, §519(b), Sept. 29, 1988, 102 Stat. 1972.)

AMENDMENTS

1988—Subsecs. (c), (f). Pub. L. 100–456 redesignated subsec. (f) as (c).

1987—Subsec. (b)(2). Pub. L. 100–180, § 1302(c)(1), inserted ''and, of those positions, those that are positions held by general or flag officers and the number of such positions'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 100–180, § 1303(b), added subsec. (f).

PUBLICATION OF REVISED JOINT DUTY ASSIGNMENT LIST

Section 1302(c)(2) of Pub. L. 100–180 provided that: ''The Secretary of Defense shall publish a revised list under section 668(b)(2) of title 10, United States Code, taking into account the amendments made by this section [amending sections 661 and 668 of this title], not later than six months after the date of the enactment of this Act [Dec. 4, 1987].''

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

The list of positions required to be published by subsec. (b)(2) of this section to be published not later than six months after Oct. 1, 1986, see section 406(a)(2) of Pub. L. 99–433, set out as a note under section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 664 of this title.

CHAPTER 39—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
671a. Members: service extension during war.
671b. Members: service extension when Congress is not in session.
672. Reference to chapter 1209.
[673 to 686. Renumbered.]
687.[1] Ready Reserve: muster duty.
688. Retired members.
[689. Renumbered.]
690.[1] Limitation on duty with Reserve Officer Training Corps units.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(7), Oct. 5, 1994, 108 Stat. 3013, substituted ''Reference to chapter 1209'' for ''Reserve components generally'' in item 672 and struck out former items 673 to 686 and 689.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(4)(B), Dec. 5, 1991, 105 Stat. 1472, substituted ''Corps'' for ''Corp'' in item 690.

Pub. L. 102–25, title VII, § 701(e)(3), Apr. 6, 1991, 105 Stat. 114, transferred item 687 ''Limitation on duty with Reserve Officer Training Corp units'' to appear after item 689 and redesignated that item as 690.

1990—Pub. L. 101–510, div. A, title V, § 559(a)(2), Nov. 5, 1990, 104 Stat. 1571, added item 687 ''Limitation on duty with Reserve Officer Training Corp units''.

1989—Pub. L. 101–189, div. A, title V, § 502(a)(2), Nov. 29, 1989, 103 Stat. 1436, added item 687.

1987—Pub. L. 100–180, div. A, title XII, § 1231(4), Dec. 4, 1987, 101 Stat. 1160, amended analysis by transferring item 686 from the end to a position immediately below item 685.

1986—Pub. L. 99–661, div. A, title IV, § 412(b)(2), Nov. 14, 1986, 100 Stat. 3862, added item 686 at end of analysis.

1983—Pub. L. 98–94, title X, §§ 1017(b)(4), 1021(b), Sept. 24, 1983, 97 Stat. 669, 670, substituted ''Retired members'' for ''Regular components: retired members'' in item 688, and added item 673c.

1980—Pub. L. 96–513, title V, § 501(8), Dec 12, 1980, 94 Stat. 2907, struck out item 687 ''Non-Regulars: readjustment payment upon involuntary release from active duty'' and added items 688 and 689.

1979—Pub. L. 96–107, title III, § 303(a)(2), Nov. 9, 1979, 93 Stat. 806, struck out item 686 ''Reports to Congress''.

[1] Sections 687 and 690 renumbered sections 12319 and 12321, respectively, by Pub. L. 103–337 without corresponding amendment of chapter analysis.

1976—Pub. L. 94–286, § 1, May 14, 1976, 90 Stat. 517, added item 673b.

1968—Pub. L. 90–235, § 1(a)(1)(B), Jan. 2, 1968, 81 Stat. 753, added items 671a and 671b.

1967—Pub. L. 90–40, § 6(2), June 30, 1967, 81 Stat. 106, added item 673a.

1962—Pub. L. 87–651, title I, § 102(b), Sept. 7, 1962, 76 Stat. 508, added item 687.

1958—Pub. L. 85–861, § 1(16), Sept. 2, 1958, 72 Stat. 1441, added items 684 and 685.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 513 of this title.

§ 671. Members not to be assigned outside United States before completing training

(a) A member of the armed forces may not be assigned to active duty on land outside the United States and its territories and possessions until the member has completed the basic training requirements of the armed force of which he is a member.

(b) In time of war or a national emergency declared by Congress or the President, the period of required basic training (or its equivalent) may not (except as provided in subsection (c)) be less than 12 weeks.

(c)(1) A period of basic training (or equivalent training) shorter than 12 weeks may be established by the Secretary concerned for members of the armed forces who have been credentialed in a medical profession or occupation and are serving in a health-care occupational specialty, as determined under regulations prescribed under paragraph (2). Any such period shall be established under regulations prescribed under paragraph (2) and may be established notwithstanding section 4(a) of the Military Selective Service Act (50 U.S.C. App. 454(a)).

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations for the purposes of paragraph (1). The regulations prescribed by the Secretary of Defense shall apply uniformly to the military departments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Oct. 7, 1975, Pub. L. 94–106, title VIII, § 802(b), 89 Stat. 537; Nov. 14, 1986, Pub. L. 99–661, div. A, title V, § 501, 100 Stat. 3863; Nov. 30, 1993, Pub. L. 103–160, div. A, title V, § 511, 107 Stat. 1648.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
671	50 App.:454(a) (words between semicolon and proviso of 6th par.).	June 24, 1948, ch. 625, § 4(a) (words between semicolon and proviso of 6th par.); restated June 19, 1951, ch. 144, § 1(d) (words between semicolon and proviso of 6th par.), 65 Stat. 78.

The words ''four months of basic training or its equivalent'' are substituted for the words ''the equivalent of at least four months of basic training''. The words ''who is enlisted, inducted, appointed, or ordered to active duty after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act [June 19, 1951]'' and ''at any installation located'' are omitted as surplusage.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160, § 511(1), inserted ''(except as provided in subsection (c))'' after ''may not''.

Subsec. (c). Pub. L. 103–160, §511(2), added subsec. (c).

1986—Pub. L. 99–661 amended section generally. Prior to amendment, section read as follows: ''No member of an armed force may be assigned to active duty on land outside the United States and its Territories and possessions, until he has had twelve weeks of basic training or its equivalent.''

1975—Pub. L. 94–106 reduced minimum period of basic training from four months to twelve weeks.

§671a. Members: service extension during war

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter.

(Added Pub. L. 90–235, §1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§671b. Members: service extension when Congress is not in session

(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the armed forces, that expire before the thirtieth day after Congress next convenes or reconvenes.

(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order.

(Added Pub. L. 90–235, §1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; amended Pub. L. 101–189, div. A, title VI, §653(a)(3), Nov. 29, 1989, 103 Stat. 1462.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 substituted ''armed forces'' for ''Armed Forces of the United States''.

§672. Reference to chapter 1209

Provisions of law relating to service of members of reserve components on active duty are set forth in chapter 1209 of this title (beginning with section 12301).

(Added Pub. L. 103–337, div. A, title XVI, §1662(e)(4), Oct. 5, 1994, 108 Stat. 2992.)

PRIOR PROVISIONS

A prior section 672 was renumbered section 12301 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

[§673. Renumbered §12302]

[§673a. Renumbered §12303]

[§673b. Renumbered §12304]

[§673c. Renumbered §12305]

[§674. Renumbered §12306]

[§675. Renumbered §12307]

[§676. Renumbered §12308]

[§677. Renumbered §12309]

[§678. Renumbered §12310]

[§679. Renumbered §12311]

[§680. Renumbered §12312]

[§681. Renumbered §12313]

[§682. Renumbered §12314]

[§683. Renumbered §12315]

[§684. Renumbered §12316]

[§685. Renumbered §12317]

[§686. Renumbered §12318]

PRIOR PROVISIONS

A prior section 686, acts Aug. 10, 1956, ch. 1041, 70A Stat. 32; Apr. 21, 1976, Pub. L. 94–273, §11(2), 90 Stat. 378, provided for an annual officer grade distribution report, prior to repeal by Pub. L. 96–107, title III, §303(a)(1), Nov. 9, 1979, 93 Stat. 806.

[§687. Renumbered §12319]

CODIFICATION

Another section 687 was renumbered section 12321 of this title.

PRIOR PROVISIONS

A prior section 687, added Pub. L. 87–651, title I, §102(a), Sept. 7, 1962, 76 Stat. 506; amended Pub. L. 89–718, §6, Nov. 2, 1966, 80 Stat. 1115, related to readjustment payment upon involuntary release of non-regulars from active duty, prior to repeal by Pub. L. 96–513, title I, §109(a), Dec. 12, 1980, 94 Stat. 2870, effective Sept. 15, 1981.

§688. Retired members

(a) Under regulations prescribed by the Secretary of Defense, a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, a member of the Retired Reserve who was retired under section 1293, 3911, 3914, 6323, 8911, or 8914 of this title, or a member of the Fleet Reserve or Fleet Marine Corps Reserve may be ordered to active duty by the Secretary of the military department concerned at any time. The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(b) A member ordered to active duty under this section who, while on active duty, is promoted to a grade that is higher than his retired grade is entitled, upon his release from that

tour of active duty, to placement on the retired list in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) Except in time of war, or of national emergency declared by the Congress or the President after November 30, 1980, not more than fifteen retired general officers of the Army, Air Force, or Marine Corps, and not more than fifteen retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of sixty days or less is not counted.

(d)(1) Except as provided in paragraphs (2) and (3), a retired member ordered to active duty under this section shall be ordered to active duty in his retired grade.

(2) A retired member ordered to active duty under this section whose retired grade is above the grade of major general or rear admiral shall be ordered to active duty in the highest permanent grade held by such member while serving on active duty.

(3)(A) A retired member ordered to active duty under this section who has previously served on active duty satisfactorily, as determined by the Secretary of the military department concerned, in a grade higher than that member's retired grade may be ordered to active duty in the highest grade in which the member had so served satisfactorily, except that such a member may not be so ordered to active duty in a grade above major general or rear admiral.

(B) A retired member ordered to active duty in a grade that is higher than the member's retired grade pursuant to paragraph (1) shall be treated for purposes of subsection (b) as if the member was promoted to that higher grade while on that tour of active duty.

(C) If, upon being released from that tour of active duty, such a retired member has served on active duty satisfactorily, as determined by the Secretary concerned, for not less than a total of 36 months in a grade that is a higher grade than the member's retired grade, the member is entitled to placement on the retired list in that grade.

(Added Pub. L. 96–513, title I, §106, Dec. 12, 1980, 94 Stat. 2868; amended Pub. L. 98–94, title X, §1017(b)(1)–(3), Sept. 24, 1983, 97 Stat. 669; Pub. L. 99–145, title V, §516, Nov. 8, 1985, 99 Stat. 630; Pub. L. 102–190, div. A, title V, §506(a), Dec. 5, 1991, 105 Stat. 1359; Pub. L. 103–160, div. A, title V, §563, Nov. 30, 1993, 107 Stat. 1669.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''who was retired under section 1293, 3911, 3914, 6323, 8911, or 8914 of this title'' for ''who has completed at least 20 years of active service''.

1991—Subsec. (d)(1). Pub. L. 102–190, §506(a)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (d)(3). Pub. L. 102–190, §506(a)(2), added par. (3).

1985—Subsec. (d). Pub. L. 99–145 added subsec. (d).

1983—Pub. L. 98–94, §1017(a)(3), substituted ''Retired members'' for ''Regular components: retired members'' in section catchline.

Subsec. (a). Pub. L. 98–94, §1017(b)(1), inserted '', a member of the Retired Reserve who has completed at least 20 years of active service, or a member of the Fleet Reserve or Fleet Marine Corps Reserve''.

Subsec. (b). Pub. L. 98–94, §1017(b)(2), substituted ''A member ordered to active duty under this section'' for ''A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps''.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

GRADE OF RECALLED RETIRED MEMBERS ORDERED TO ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

Pub. L. 102–25, title III, §311, Apr. 6, 1991, 105 Stat. 84, as amended by Pub. L. 102–190, div. A, title V, §506(b), Dec. 5, 1991, 105 Stat. 1359, provided that:

''(a) IN GENERAL.—A retired member of the Armed Forces ordered to active duty under section 688 of title 10, United States Code, in connection with Operation Desert Storm who had previously served on active duty satisfactorily, as determined by the Secretary of the military department concerned, in a grade higher than that member's retired grade may be ordered to active duty under that section in the highest grade in which the member had so served satisfactorily.

''(b) GRADE UPON RELEASE FROM ACTIVE DUTY.—(1) For the purposes of section 688(b) of title 10, United States Code, a member of the Armed Forces ordered to active duty in a grade that is higher than the member's retired grade pursuant to subsection (a) shall be deemed to have been promoted to such higher grade while on such active duty.

''(2) A retired member described in subsection (a) who, upon being released from the tour of active duty covered by that subsection, has served on active duty satisfactorily, as determined by the Secretary concerned, for not less than a total of 36 months in a grade higher than the member's retired grade, is entitled, upon that release from active duty, to placement on the retired list in that grade.

''(c) EFFECTIVE DATE.—This section shall apply with respect to retired members ordered to active duty on or after August 2, 1990, and before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993 [Dec. 5, 1991].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 6151, 12307 of this title; title 37 sections 302f, 403a; title 38 sections 3013, 3231, 3511; title 50 App. section 592.

[§ 689. Renumbered § 12320]

[§ 690. Renumbered § 12321]

CHAPTER 40—LEAVE

Sec.
701. Entitlement and accumulation.
702. Cadets and midshipmen.
703. Reenlistment leave.
704. Use of leave; regulations.
705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas.
706. Administration of leave required to be taken pending review of certain court-martial convictions.
707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken.
708. Educational leave of absence.

AMENDMENTS

1984—Pub. L. 98–525, title VII, §707(a)(2), Oct. 19, 1984, 98 Stat. 2572, added item 708.

1981—Pub. L. 97–81, §2(b)(2), Nov. 20, 1981, 95 Stat. 1087, added items 706 and 707.

1980—Pub. L. 96–579, §5(b)(2), Dec. 23, 1980, 94 Stat. 3367, added item 705.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a.

§701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;

(2) absence over leave;

(3) confinement as the result of a sentence of a court-martial; and

(4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsection (f) and subsection (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

[(d) Repealed. Pub. L. 89–151, §3, Aug. 28, 1965, 79 Stat. 586.]

(e) Leave taken before discharge is considered to be active service.

(f)(1) Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph—

(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be permitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the 60-day limitation in subsection (b) and the 90-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(Added Pub. L. 87–649, §3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 89–151, §3, Aug. 28, 1965, 79 Stat. 586; Pub. L. 90–245, §1, Jan. 2, 1968, 81 Stat. 782; Pub. L. 92–596, §1, Oct. 27, 1972, 86 Stat. 1317; Pub. L. 96–579, §10, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–81, §2(a), Nov. 20, 1981, 95 Stat. 1085; Pub. L. 98–94, title X, §1031(a), Sept. 24, 1983, 97 Stat. 671; Pub. L. 98–525, title XIV, §1405(18), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–661, div. A, title V, §506(a), Nov. 14, 1986, 100 Stat. 3864; Pub. L. 102–190, div. A, title VI, §638, Dec. 5, 1991, 105 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
701(a)	37:31a(a) (1st, 2d, and last sentences).	Aug. 9, 1946, ch. 931, §3(a) (less 4th, 5th, 6th, and 7th sentences), (b) (less proviso), 60 Stat. 963; Sept. 23, 1950, ch. 998, §1, 64 Stat. 978; Aug. 10, 1956, ch. 1041, §23, 70A, Stat. 630.
701(b).	37:31a(b) (less proviso).	
701(c)	37:31a(a) (8th sentence).	
701(d)	37:31a(a) (3d sentence).	
701(e)	37:31a(a) (9th sentence).	

In subsection (a), the 2d sentence of section 31a(a) of existing title 37 is omitted as inconsistent with subsection (b).

In subsection (b), the words ''(other than a member on terminal leave on September 1, 1946)'' and ''at any time after August 31, 1946'' are omitted as executed. The words ''or regulation'' are omitted, since a regulation cannot override a statute. The words ''or have to his credit'' are omitted as surplusage.

In subsections (b) and (c), the word ''accrued'' is omitted as covered by the word ''accumulated''.

In subsection (e), the words ''before or after August 9, 1946'' and section 31a(a) (words after semicolon in 9th sentence) of existing title 37 are omitted as executed.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), leave'' for ''Leave'' in last sentence, and added par. (2).

1986—Subsec. (h). Pub. L. 99–661 added subsec. (h).

1984—Subsec. (g). Pub. L. 98–525 substituted ''60-day'' for ''sixty-day'', ''90-day'' for ''ninety-day'', and ''150'' for ''one hundred and fifty'' in two places.

1983—Subsec. (f). Pub. L. 98–94 substituted ''the end of the third fiscal year'' for ''the end of the fiscal year''.

1981—Subsec. (a)(2). Pub. L. 97–81, §2(a)(1), struck out ''and'' at end of par. (2).

Subsec. (a)(3). Pub. L. 97–81, §2(a)(2), substituted ''; and'' for a period at end of par. (3).

Subsec. (a)(4). Pub. L. 97–81, §2(a)(3), added par. (4).

1980—Subsec. (f). Pub. L. 96–579 authorized accumulation of leave for service as a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section.

1972—Subsec. (b). Pub. L. 92–596, §1(1), inserted reference to subsec. (g).

Subsec. (g). Pub. L. 92–596, §1(2), added subsec. (g).

1968—Subsec. (b). Pub. L. 90–245, §1(1), inserted reference to subsec. (f).

Subsec. (f). Pub. L. 90–245, §1(2), added subsec. (f).

1965—Subsec. (d). Pub. L. 89–151 repealed subsec. (d) which provided that accumulated leave did not survive the death of a member during active service.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1031(b)(1), (2) of Pub. L. 98–94 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983] and shall apply to leave accumulated under section 701(f) of such title [this title] after September 30, 1980.

''(2) A member of the Armed Forces who was authorized under section 701(f) of such title to accumulate 90 days' leave during fiscal year 1980, 1981, or 1982 and lost any leave at the end of fiscal year 1981, 1982, or 1983, respectively, because of the provisions of the last sentence of such section, as in effect on the day before the date of the enactment of this Act, shall be credited with the amount of the leave lost and may retain leave in excess of 60 days until (A) September 30, 1984, or (B) the end of the third fiscal year after the year in which such leave was accumulated, whichever is later, but in no case may such a member accumulate leave in excess of 90 days.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3 of Pub. L. 92–596 provided that: ''The first and second sections of this Act [amending this section and section 501 of Title 37, Pay and Allowances of the Uniformed Services] become effective as of February 28, 1961.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90–245 provided that: ''Section 1 of this Act [amending this section] applies only to active duty performed after January 1, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–151 effective only in the case of members who die on or after Aug. 28, 1965, see section 4 of Pub. L. 89–151, set out as a note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to Coast and Geodetic Survey [now commissioned officer corps of National Oceanic and Atmospheric Administration], by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

ACCUMULATION OF LEAVE AFTER SEPTEMBER 30, 1980, PURSUANT TO SUBSECTION (f)

Pub. L. 97–39, title VII, §702, Aug. 14, 1981, 95 Stat. 943, provided that: ''The amendment made by section 10 of the Military Pay and Allowances Benefits Act of 1980 (Public Law 96–579; 94 Stat. 3368) [amending this section] shall apply with respect to the accumulation of leave by members of the Armed Forces who after September 30, 1979, are assigned (1) to a deployable ship or mobile unit, or (2) to other duty designated after the date of the enactment of this Act [Aug. 14, 1981] as duty qualifying for the purpose of section 701(f) of title 10, United States Code, as amended by that amendment.''

For savings provision extending period for which certain accrued leave under subsec. (f) of this section may be retained by members of Armed Forces, see section 1115 of Pub. L. 101–510, set out as a Treatment of Accumulated Leave note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 703 of this title; title 37 sections 501, 502.

§ 702. Cadets and midshipmen

(a) Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation.

Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) Sections 701, 703, and 704 of this title and subsection (a) do not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, midshipmen at the United States Naval Academy, or cadets or midshipmen serving elsewhere in the armed forces. The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen.

(Added Pub. L. 87–649, §3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–513, title V, §511(20), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 103–160, div. A, title V, §532, Nov. 30, 1993, 107 Stat. 1657.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
702(a)	37:31a(c).	Aug. 9, 1946, ch. 931, §3(c); added June 2, 1950, ch. 217, §1, 64 Stat. 194.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.
702(b)	37:38 (less applicability to payment for leave).	Aug. 9, 1946, ch. 931, §10 (less applicability to payment for leave); added Aug. 4, 1947, ch. 475, §3 (less applicability to payment for leave), 61 Stat. 749.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the words ''outside the United States or in Alaska or Hawaii'' are substituted for the words ''outside the continental limits of the United States'' to conform to the interpretation of those words in other sections of title 10 and revised title 37.

In subsections (a) and (b), the words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 struck out ''regular'' before ''component'' in first sentence.

1980—Subsec. (b). Pub. L. 96–513 substituted ''Sections 701, 703, and 704 of this title and subsection (a)'' for ''Sections 701, 702(a), 703, and 704 of this chapter''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§703. Reenlistment leave

(a) Leave for not more than 90 days may be authorized, in the discretion of the Secretary concerned, or his designated representative, to a member of an armed force who reenlists. Leave authorized under this section shall be deducted from leave accrued during active service before reenlistment or charged against leave that may accrue during future active service, or both.

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in section 310(a)(2) of title 37 and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be—

(1) authorized not more than thirty days of leave, exclusive of travel time, at an authorized place selected by the member; and

(2) transported at the expense of the United States to and from that place.

Leave under this subsection may not be charged or credited to leave that accrued or that may accrue under section 701 of this title. The provisions of this subsection shall be effective only in the case of members who extend their required tours of duty on or before June 30, 1973.

(Added Pub. L. 87–649, §3(1), Sept. 7, 1962, 76 Stat. 493; amended Pub. L. 89–735, Nov. 2, 1966, 80 Stat. 1163; Pub. L. 90–330, June 5, 1968, 82 Stat. 170; Pub. L. 91–302, July 2, 1970, 84 Stat. 368; Pub. L. 92–481, Oct. 9, 1972, 86 Stat. 795.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
703	37:31a(a) (4th and 7th sentences).	Aug. 9, 1946, ch. 931, §3(a) (4th and 7th sentences), 60 Stat. 963.
	37:32(f) (last 8 words)	Aug. 9, 1946, ch. 931, §2(f) (last 8 words), 60 Stat. 963.

The 4th sentence of section 31a(a) of existing title 37 is omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–481 substituted ''June 30, 1973'' for ''June 30, 1972''.

1970—Subsec. (b). Pub. L. 91–302 substituted ''June 30, 1972'' for ''June 30, 1970''.

1968—Subsec. (b). Pub. L. 90–330 substituted ''June 30, 1970'' for ''June 30, 1968''.

1966—Pub. L. 89–735 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

§704. Use of leave; regulations

(a) Under regulations prescribed by the Secretary concerned, or his designated representative, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
704(a)	37:31a(a) (5th sentence).	Aug. 9, 1946, ch. 391, §§ 3(a) (5th and 6th sentences), 4(e), 60 Stat. 963; Aug. 4, 1947, ch. 475, § 1 (5th par.), 61 Stat. 749.
704(b)	37:31a(a) (6th sentence). 37:33(e). 37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the 1st 18 words of the 5th sentence of section 31a(a) of existing title 37 are omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

In subsection (b), 37:33(e) (less 1st sentence) is omitted as executed.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

§ 705. Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

(1) is entitled to basic pay;

(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

(b) The benefits authorized by subsection (a) are—

(1) a period of rest and recuperative absence for not more than 30 days; or

(2) a period of rest and recuperative absence for not more than 15 days and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return.

(c) The provisions of this section shall not be effective unless the Secretary concerned determines that the application of this section will not adversely affect combat or unit readiness.

(Added Pub. L. 96–579, § 5(b)(1), Dec. 23, 1980, 94 Stat. 3366.)

EFFECTIVE DATE

Section 5(c)(2) of Pub. L. 96–579 provided: ''Section 705 of title 10, United States Code, as added by subsection (b), shall take effect upon the date of the enactment of this section [Dec. 23, 1980] and shall apply only with respect to periods of extended duty overseas beginning on or after such date of enactment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 314, 411g.

§ 706. Administration of leave required to be taken pending review of certain court-martial convictions

(a) A period of leave required to be taken under section 876a of this title shall be charged against any accrued leave to the member's credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under subsection (b), the total period of leave required to be taken shall be charged as excess leave.

(b)(1) A member who is required to take leave under section 876a of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the member is entitled to pay and allowances during the period of accrued leave required to be taken.

(2) Except as provided in paragraph (1) and in section 707 of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a of this title.

(c)(1) A member required to take leave under section 876a of this title is not entitled to any right or benefit under section 4301 of title 38 solely because of employment during the period of such leave.

(2) Section 974 of this title does not apply to a member required to take leave under section 876a of this title during the period of such leave.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1085; amended Pub. L. 102–568, title V, § 506(c)(5), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–337, div. A, title X, § 1070(e)(1), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 103–353, § 2(b)(3), Oct. 13, 1994, 108 Stat. 3169.)

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–353, which directed the amendment of par. (1) by substituting ''chapter 43'' for ''section 4321'', could not be executed because intervening amendment by Pub. L. 103–337 had substituted ''section 4301'' for ''section 4321''. See below.

Pub. L. 103–337 substituted ''4301'' for ''4321''.

1992—Subsec. (c)(1). Pub. L. 102–568 substituted ''section 4321'' for ''section 2021''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Section 7 of Pub. L. 97–81, as amended by Pub. L. 98–209, §12(b), Dec. 6, 1983, 97 Stat. 1407, provided that:

''(a) The amendments made by this Act [enacting this section and sections 707 and 876a of this title and amending sections 701, 813, 832, 838, 867, and 869 of this title] shall take effect at the end of the sixty-day period beginning on the date of the enactment of this Act.

''(b)(1) The amendments made by section 2 [enacting this section and sections 707 and 876a of this title and amending section 701 of this title] shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

''(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 [see Effective Date of 1983 Amendment note set out under section 801 of this title]; or

''(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.

''(2) The amendments made by section 3 [amending section 813 of this title] shall apply to each person held as the result of a court-martial sentence announced on or after the effective date of such amendments.

''(3) The amendment made by section 4(a) [amending section 832 of this title] shall apply with respect to investigations under section 832 (article 32) of title 10, United States Code, that begin on or after the effective date of such amendment.

''(4) The amendment made by section 4(b) [amending section 838 of this title] shall apply to trials by courts-martial in which all charges are referred to trial on or after the effective date of such amendment.

''(5) The amendment made by section 5 [amending section 867 of this title] shall apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after the effective date of such amendment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 707 of this title.

§707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

(a) A member—

(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court of Criminal Appeals under section 866 of this title or by the United States Court of Appeals for the Armed Forces under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which his court-martial sentence was approved by the convening authority.

(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.

(3) If a member is entitled to be paid under this section but fails to provide sufficient information in a timely manner regarding his income when such information is requested under regulations prescribed under subsection (c), the periods of time prescribed in paragraph (2) shall be

extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. Such regulations may provide for the method of determining a member's income during any period the member is deemed to have accrued pay and allowances, including a requirement that the member provide income tax returns and other documentation to verify the amount of his income.

(Added Pub. L. 97–81, § 2(b)(1), Nov. 20, 1981, 95 Stat. 1086; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by officer exercising general court-martial jurisdiction under provisions of such section as it existed on day before effective date of Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by officer empowered to act on sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

§ 708. Educational leave of absence

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Transportation and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for a period of not to exceed two years for the purpose of permitting the member to pursue a program of education.

(b)(1) A member may not be granted a leave of absence under this section unless—

(A) in the case of an enlisted member, the member agrees in writing to extend his current enlistment after completion (or other termination) of the program of education for which the leave of absence was granted for a period of two months for each month of the period of the leave of absence; and

(B) in the case of an officer, the member agrees to serve on active duty after completion (or other termination) of the program of education for which the leave of absence was granted for a period (in addition to any other period of obligated service on active duty) of two months for each month of the period of the leave of absence.

(2) A member may not be granted a leave of absence under this section until he has completed any extension of enlistment or reenlistment, or any period of obligated service, incurred by reason of any previous leave of absence granted under this section.

(c)(1) While on a leave of absence under this section, a member shall be paid basic pay but may not receive basic allowance for quarters or basic allowance for subsistence or any other pay and allowances to which he would otherwise be entitled for such period.

(2) A period during which a member is on a leave of absence under this section shall be counted for the purposes of computing the amount of the member's basic pay, for the purpose of determining the member's eligibility for retired pay, and for the purpose of determining the member's time in grade for promotion purposes, but may not be counted for the purposes of completion of the term of enlistment of the member (in the case of an enlisted member) or for purposes of section 3021 of title 38, relating to entitlement to supplemental educational assistance.

(d)(1) In time of war, or of national emergency declared by the President or the Congress after October 19, 1984, the Secretary concerned may cancel any leave of absence granted under this section.

(2) The Secretary concerned may cancel a leave of absence granted to a member under this section if the Secretary determines that the member is not satisfactorily pursuing the program of education for which the leave was granted.

(e) In this section, the term ''eligible member'' means a member of the armed forces on active duty who is eligible for basic educational assistance under chapter 30 of title 38 and who—

(1) in the case of an enlisted member, has completed at least one term of enlistment and has reenlisted; and

(2) in the case of an officer, has completed the officer's initial period of obligated service on active duty.

(Added Pub. L. 98–525, title VII, § 707(a)(1), Oct. 19, 1984, 98 Stat. 2571; amended Pub. L. 100–26, § 7(i)(2), (k)(3), Apr. 21, 1987, 101 Stat. 282, 284; Pub. L. 103–337, div. A, title X, § 1070(e)(2), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 3021 of title 38'' for ''section 1421 of title 38''.

1987—Subsec. (d)(1). Pub. L. 100–26, § 7(i)(2), substituted ''October 19, 1984'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 100–26, § 7(k)(3), inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE

Section 707(b) of Pub. L. 98–525 provided that: ''Section 708 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1985.''

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
711. Senior members of Military Staff Committee of United Nations: appointment.
711a. American National Red Cross: detail of commissioned officers.
712. Foreign governments: detail to assist.
713. State Department: assignment or detail as couriers and building inspectors.
[714, 715. Repealed.]
716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

Sec.
717. Members of the armed forces: participation in international sports.
[718. Repealed.]
719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration.
720. Chief of Staff to President: appointment.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(8), Oct. 5, 1994, 108 Stat. 3013, struck out item 715 ''Reserve components: detail of members of regular and reserve components to assist''.

1986—Pub. L. 99–433, title I, §110(a)(2), Oct. 1, 1986, 100 Stat. 1001, struck out item 718 ''Secretary of Defense: detail of officers to assist''.

1983—Pub. L. 98–94, title X, §1007(a)(2), Sept. 24, 1983, 97 Stat. 662, included reference to the Public Health Service in item 716.

1980—Pub. L. 96–513, title V, §§501(9)(B), 511(23)(C), Dec. 12, 1980, 94 Stat. 2908, 2922, substituted ''assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration'' for ''assignment or detail to Environmental Science Services Administration'' in item 719 and added item 720.

Pub. L. 96–215, §2(b), Mar. 25, 1980, 94 Stat. 123, inserted ''and to and from National Oceanic and Atmospheric Administration'' after ''between armed forces'' in item 716.

1970—Pub. L. 91–392, §2, Sept. 1, 1970, 84 Stat. 834, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 716.

1968—Pub. L. 90–235, §4(a)(1)(B), Jan. 2, 1968, 81 Stat. 759, added item 711a.

1966—Pub. L. 89–683, §1(2), Oct. 15, 1966, 80 Stat. 960, added item 719.

1962—Pub. L. 87–651, title I, §103(b), title II, §205(b), Sept. 7, 1962, 76 Stat. 508, 519, redesignated item 716, relating to participation of members of the armed forces in international sports, as 717, and added item 718.

1960—Pub. L. 86–533, §1(5)(B), June 29, 1960, 74 Stat. 246, repealed item 714 ''Reports to Congress on length of tours of duty outside United States by members of Army and Air Force''.

1958—Pub. L. 85–861, §1(18), Sept. 2, 1958, 72 Stat. 1442, added item 716, relating to participation of members of the armed forces in international sports.

Pub. L. 85–599, §11(1), Aug. 6, 1958, 72 Stat. 521, added item 716, relating to transfers of commissioned officers.

CROSS REFERENCES

Particular provisions relating to special assignments, etc.—

Air Force, see section 8541 et seq. of this title.

Army, see section 3533 et seq. of this title.

Coast Guard, see section 148 et seq. of Title 14, Coast Guard.

National Guard, see section 316 of Title 32, National Guard.

Navy, see section 5983 et seq. of this title.

§711. Senior members of Military Staff Committee of United Nations: appointment

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
711	10:506b(c) (less last 12 words).	Aug. 7, 1947, ch. 512, §504(c) (less last 12 words), 61 Stat 886.

The words ''Within the limitations as to numbers in grade prescribed in this Act'', so far as they relate to the Army and the Air Force, are omitted as executed by the declaration of the national emergency on December 16, 1950, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1951/6180, 17 Oct. 1951). So far as they relate to the Navy and the Marine Corps they are omitted as surplusage. The words ''may appoint'' are inserted to make it explicit that the revised section prescribes the appointment as well as the rank and pay that go with it. The word ''grade'' is substituted for the word ''rank''. The words ''Navy or Marine Corps'' are substituted for the words ''Navy, including the Marine Corps''. The words ''Army, * * * Air Force'' are substituted for the words ''Army less the Air Corps * * * Air Corps''. The words ''pay and allowances of a vice admiral or lieutenant general'' are omitted as surplusage, since this is implicit upon appointment to the grade. The words ''and Naval'' are omitted to conform to the name ''Military Staff Committee'' established by Article 47 of the United Nations Charter.

CROSS REFERENCES

Grade on retirement of Army and Air Force members, see sections 3962, 8962 of this title.

§711a. American National Red Cross: detail of commissioned officers

Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with the Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first-aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or

(C) a medical officer of the Air Force.

(Added Pub. L. 90–235, §4(a)(1)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title V, §511(21), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 struck out ''(a)'' before ''Commissioned''.

1968—Subsec. (a)(1)(A). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 712. Foreign governments: detail to assist

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32; June 30, 1958, Pub. L. 85–477, ch. V, § 502(k), 72 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
712(a)	10:540 (less provisos). 34:441a (less provisos).	May 19, 1926, ch. 334, 44 Stat, 565; May 14, 1935, ch. 109, 49 Stat. 218; Oct. 1, 1942, ch. 571, 56 Stat. 763.
712(b).	10:540 (provisos). 34:441a (provisos).	

In subsection (a), the words ''and the Commonwealth of the Philippine Islands'', in the Act of May 19, 1926, ch. 334, added by the Act of May 14, 1935, ch. 109, 49 Stat. 218, are not contained in 10:540 or 34:441a. They are also omitted from the revised section, since Proclamation No. 2695, effective July 4, 1946, 60 Stat. 1352 (48 U.S.C. 1240 (note)), proclaimed the independence of the Philippine Islands. Similar provisions relating to the Philippines are now contained in section 5 of the Act of June 26, 1946, ch. 500, 60 Stat. 315. The word ''members'' is substituted for the words ''officers and enlisted men'', in 10:540 and 34:441a.

In subsection (b), the words ''entitled to credit for all service'' are substituted for the words ''and shall be allowed the same credit for longevity, retirement, and for all other purposes'', in 10:540 and 34:441a.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–477 struck out provisions which authorized members of the armed forces to accept compensation or emoluments from countries to which they are detailed, and inserted provisions permitting arrangements for reimbursement or other sharing of cost.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 502(k) of Pub. L. 85–477 provided that the amendment made by that section is effective nine months after June 30, 1958.

CROSS REFERENCES

Detail of specially qualified employees to foreign governments, see section 1451 et seq. of Title 22, Foreign Relations and Intercourse.

Pay and allowances, see section 101 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

§ 713. State Department: assignment or detail as couriers and building inspectors

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
713(a)	22:956 (words before semicolon of 1st sentence).	Aug. 13, 1946, ch. 957, § 561, 60 Stat. 1011.
713(b)	22:956 (less words before semicolon of 1st sentence).	

In subsection (a), the words ''members of the armed forces under his jurisdiction'' are substituted for the words ''military and naval personnel serving under their supervision''.

In subsection (b), the words ''The Secretary concerned may'' are substituted for the words ''in the discretion of the head of the department concerned''.

[§ 714. Repealed. Pub. L. 86–533, § 1(5)(A), June 29, 1960, 74 Stat. 246]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to reports to Congress on length of tours of duty outside the United States by members of the Army and Air Force.

[§ 715. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to detail of members of regular and reserve components to assist those components. See section 12501 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, and the Secretary of Health and Human Services shall jointly establish, by regulations approved

by the President, policies and procedures for such transfers and appointments.

(b) An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before the transfer.

(Added Pub. L. 85–599, §11(2), Aug. 6, 1958, 72 Stat. 521; amended Pub. L. 91–392, §1, Sept. 1, 1970, 84 Stat. 834; Pub. L. 96–215, §2(a), Mar. 25, 1980, 94 Stat. 123; Pub. L. 97–295, §1(10), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–94, title X, §1007(a)(1), Sept. 24, 1983, 97 Stat. 661; Pub. L. 99–348, title III, §304(a)(1), July 1, 1986, 100 Stat. 703.)

CODIFICATION

Another section 716 was renumbered section 717 of this title.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ''uniformed service'' for purposes of this section. See section 101(43) of this title.

1983—Pub. L. 98–94 amended section generally, substituting ''transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service'' for ''transfers between armed forces and to and from National Oceanic and Atmospheric Administration'' in section catchline and adding subsec. (c). Prior to amendment subsecs. (a) and (b) read as follows:

''(a) Notwithstanding any other provision of law, the President may, within authorized strengths, transfer any commissioned officer with his consent from his armed force or from the National Oceanic and Atmospheric Administration to, and appoint him in, another armed force or the National Oceanic and Atmospheric Administration. The Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Commerce shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

''(b) An officer transferred under this section—

''(1) may not be assigned precedence or relative rank higher than that which he held on the day before his transfer; and

''(2) shall be credited for retirement and pay purposes with the same years of service with which he has been credited on the day before his transfer.''

1982—Subsec. (a). Pub. L. 97–295 struck out the comma after ''policies''.

1980—Pub. L. 96–215 inserted ''and to and from National Oceanic and Atmospheric Administration'' in section catchline, divided existing unlettered provisions into subsecs. (a) and (b)(1), inserted references to National Oceanic and Atmospheric Administration and to Secretary of Commerce in subsec. (a) as so redesignated, and added subsec. (b)(2).

1970—Pub. L. 91–392 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline and ''his armed force'', ''another armed force'', ''An officer transferred under this section may not be assigned'', and ''before his transfer'' for ''the Army, Navy, Air Force, or Marine Corps'', ''any other of those armed forces'', ''No officer transferred pursuant to this authority shall be assigned'', and ''prior to such transfer'' in text, respectively, and authorized interservice transfers of officers of the Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a.

§717. Members of the armed forces: participation in international sports

(a) The Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) Pan-American Games and Olympic Games and qualifying events and preparatory competition for those games; and

(2) any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition, and qualifying events and preparatory competition for that competition.

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary of Transportation, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

(c)(1) Not more than $3,000,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

(2) Not more than $100,000 may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

(d) Appropriations available to the Department of Defense or to the Department of Transportation, as the case may be, may be used to carry out this section.

(Added Pub. L. 85–861, §1(17), Sept. 2, 1958, 72 Stat. 1442, §716; renumbered §717, Pub. L. 87–651, title I, §103(a), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 89–348, §1(12), Nov. 8, 1965, 79 Stat. 1311; Pub. L. 89–718, §7, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §511(22), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–525, title XV, §1534, Oct. 19, 1984, 98 Stat. 2632.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
716 [now 717].	22:1981. 22:1982. 22:1983.	Mar. 14, 1955, ch. 11 (less last 2 pars.), 69 Stat. 11.

In subsection (a), the first 27 words are substituted for section 1 of the source statute. The reference to the Second Pan-American Games, the Seventh Olympic Winter Games, and the Games of the XVI Olympiad are omitted as covered by clause (1) of the revised subsection. The words ''subject to the limitation contained in subsection (b) herein'' are omitted as covered by revised subsection (b). The words ''any other'' are substituted for the words ''other * * * not specified in (1) above''.

In subsection (b), the word ''entry'' is substituted for the word ''commitment'' for clarity. The words ''or the

Secretary of the Treasury, as the case may be'' are inserted since, under subsection (a), the Secretary of the Treasury has the prescribed authority with respect to members of the Coast Guard when it is not operating as a service in the Navy.

In subsection (c), the words ''materiel, and equipment'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title.

1962 ACT

This section corrects a duplication in numbering occasioned by the addition of a duplicate section 716 by Pub. L. 85–861. (The first section 716 was added by Pub. L. 85–599.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–525, § 1534(1), included qualifying events and preparatory competition.

Subsec. (a)(2). Pub. L. 98–525, § 1534(2), included qualifying events and preparatory competition.

Subsec. (b). Pub. L. 98–525, § 1534(3), struck out reference to subsec. (e).

Subsec. (c). Pub. L. 98–525, § 1534(4), (6), designated existing provisions as par. (1), substituted ''$3,000,000'' for ''$800,000'' and ''October 1, 1980'' for ''March 14, 1955'', redesignated subsec. (d) as par. (2), and substituted ''October 1, 1980'' for ''March 14, 1955''.

Subsecs. (d), (e). Pub. L. 98–525, § 1534(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated par. (2) of subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, § 511(22)(A), substituted ''Transportation'' for ''the Treasury''.

Subsec. (b). Pub. L. 96–513, § 511(22), redesignated subsec. (c) as (b) and substituted reference to subsec. (c) for reference to subsec. (f), and ''Transportation'' for ''the Treasury''.

Subsecs. (c), (d). Pub. L. 96–513, § 511(22)(C), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsecs. (e), (f). Pub. L. 96–513, § 511(22) (A), (C), redesignated subsec. (f) as (e) and substituted ''Transportation'' for ''the Treasury''. Former subsection (e) redesignated (d).

1966—Subsec. (b). Pub. L. 89–718 repealed subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury to report to the Committees on Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition. See also Pub. L. 89–348, § 1(12), Nov. 8, 1965, 79 Stat. 1311, which earlier repealed the reporting requirement of subsec. (b).

1965—Subsec. (b). Pub. L. 89–348 repealed provision of subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury, as the case may be, to report to the Committees on the Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 420.

[§ 718. Repealed. Pub. L. 99–433, title I, § 110(a)(1), Oct. 1, 1986, 100 Stat. 1001]

Section, added Pub. L. 87–651, title II, § 205(a), Sept. 7, 1962, 76 Stat. 519, provided that officers of the armed forces could be detailed for duty as assistants or personal aides to the Secretary of Defense.

§ 719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the National Oceanic and Atmospheric Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position.

(Added Pub. L. 89–683, § 1(1), Oct. 15, 1966, 80 Stat. 960; amended Pub. L. 96–513, title I, § 511(23)(A), (B), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 substituted ''of members of the armed forces to National Oceanic and Atmospheric'' for ''to Environmental Science Services'' in section catchline, and substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services'' in text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 720. Chief of Staff to President: appointment

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army, Air Force, or Marine Corps or a flag officer of the Navy as the Chief of Staff to the President and may designate such position as a position of importance and responsibility under section 601 of this title.

(Added Pub. L. 96–513, title V, § 501(9)(A), Dec. 12, 1980, 94 Stat. 2907.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

CHAPTER 43—RANK AND COMMAND

Sec.
741. Rank: commissioned officers of the armed forces.
742. Rank: warrant officers.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps.
744. Physician to White House: assignment; grade.
[745. Repealed.]
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.

Sec.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.
750. Command: retired officers.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, §1114(c), Dec. 5, 1991, 105 Stat. 1502, added item 742 and struck out item 745 ''Warrant officers: rank''.

1987—Pub. L. 100–180, div. A, title XIII, §1314(b)(5)(B), Dec. 4, 1987, 101 Stat. 1175, inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in item 743.

1980—Pub. L. 96–513, title V, §501(10)(A), Dec. 12, 1980, 94 Stat. 2908, as amended Pub. L. 97–22, §10(a)(1), July 10, 1981, 95 Stat. 136, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 741.

Pub. L. 96–513, title V, §501(10)(B), Dec. 12, 1980, 94 Stat. 2908, added item 750.

1968—Pub. L. 90–235, §5(a)(1)(B), Jan. 2, 1968, 81 Stat. 761, added items 747 and 749.

1958—Pub. L. 85–861, §1(19), Sept. 2, 1958, 72 Stat. 1442, struck out item 742 ''Rank: officers of regular and reserve components''.

CROSS REFERENCES

Particular provisions relating to rank and command—

Air Force, see section 8572 et seq. of this title.

Army, see section 3572 et seq. of this title.

Navy and Marine Corps, see sections 5508, 5942 et seq. of this title.

§741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the Army, Navy, Air Force, and Marine Corps of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(d)(1) The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment and who at the time of such appointment was awarded service credit for prior commissioned service or constructive credit for advanced education or training, or special experience shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, or Marine Corps who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W–5, may, effective on the date on which he is placed on the active-duty list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33; Dec. 12, 1980, Pub. L. 96–513, title I, §107, 94 Stat. 2869; July 10, 1981, Pub. L. 97–22, §4(h), 95 Stat. 127; Dec. 1, 1981, Pub. L. 97–86, title IV, §405(b)(8), 95 Stat. 1106; Oct. 12, 1982, Pub. L. 97–295, §1(11), 96 Stat. 1289; Oct. 30, 1984, Pub. L. 98–557, §25(c), 98 Stat. 2873; Nov. 8, 1985, Pub. L. 99–145, title V, §514(b)(8), 99 Stat. 629; Dec. 5, 1991, Pub. L. 102–190, div. A, title XI, §1131(1)(A), 105 Stat. 1505; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, §1626, 108 Stat. 2962.)

AMENDMENT OF SUBSECTION (d)(3)

Pub. L. 103–337, div. A, title XVI, §§1626, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2962, 3026, provided that, effective Oct. 1, 1996, subsection (d)(3) of this section is amended—

(1) by inserting ''or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list'' after ''warrant officer (W–5)'';

(2) by inserting ''or reserve active-status list'' after ''active-duty list'' the second place it appears; and

(3) by adding at the end: ''The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.''

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
741(a)	10:517 (1st and 2d sentences, less applicability to rank within grade). 14:43. 34:651 (less applicability to establishment of commissioned grades, and less applicability to rank within grade). 34:241. 34:241a (1st and 2d sentences, less applicability to rank within grade).	Aug. 7, 1947, ch. 512, §§314(j), 516, 61 Stat. 865, 908. R.S. 1603 (less applicability to establishment of commissioned grades). R.S. 1466. Aug. 4, 1949, ch. 393, §1(43), 63 Stat. 498.
741(b)	10:517 (1st and 2d sentences, as applicable to rank within grade). 34:241a (1st and 2d sentences, as applicable to rank within grade). 34:626–1(j). 34:651 (less applicability to establishment of commissioned grades, and as applicable to rank within grade).	
741(c)	10:517 (less 1st and 2d sentences). 34:241a (less 1st and 2d sentences).	

In subsection (a), the word ''Regular'', pertaining to major generals and brigadier generals, in 10:517 and 34:241a, is omitted, since the last sentence of 10:517 and 34:241a establish the rank of nonregular officers of the Army and the Air Force, with respect to officers of the Regular Army and the Regular Air Force. The effect of establishing their rank with respect to regular officers, when read in connection with the provisions prescribing the rank of officers of the regular components with officers of the other services, under 10:517 (less last sentence), 34:241a (less last sentence), and 34:241, is therefore to establish the rank of nonregular officers with respect to officers of the other listed services. This allows a consolidation of 10:517 (less last sentence, as applicable to rank), 34:241, and 34:241a (less last sentence, as applicable to rank), together with 34:651, into a table of rank among officers of the Army, Navy, Air Force, and Marine Corps. The words ''lineal rank only being considered'', in 34:241, are covered by setting forth the grades in tabular form. The words ''whether on the active or retired list'', in 34:241, are omitted, since retired officers of the Navy continue to be officers of the Navy. The words ''Lieutenant (junior grade)'' are substituted for the word ''masters'', in R.S. 1466, to reflect the change made in the name of that grade by the Act of March 3, 1883, ch. 97 (2d par.), 22 Stat. 472.

In subsections (a) and (b), the words ''entitled to pay'' and ''entitled to the pay'', respectively, are inserted, since rear admiral is one grade with two ranks depending on the amount of pay to which the incumbent is entitled.

In subsection (b), the words ''in such grades'', in 10:517 and 34:241a, are omitted as surplusage.

In subsection (c), the words ''A commissioned officer of the Army or the Air Force'' are substituted for the words ''All officers of the Army of the United States, including all components thereof'', since rank among officers of the Regular Army and Regular Air Force is determined under sections 3573, 3574, 8573, and 8574 of this title.

AMENDMENTS

1991—Subsec. (d)(3). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''Rear admiral (lower half)'' for ''Commodore'' in table.

1984—Subsec. (a). Pub. L. 98–557 struck out ''(Navy) and Rear admiral (upper half) (Coast Guard)'' after ''Rear admiral'' and ''(Navy) and Rear admiral (lower half) (Coast Guard)'' after ''Commodore'' in table.

1982—Subsec. (c). Pub. L. 97–295 substituted ''the'' for ''the the'' after ''uniformly among''.

1981—Pub. L. 97–22, §4(h)(4), substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 97–86 substituted ''Commodore'' for ''Commodore admiral'' in right column of table opposite Brigadier general.

Pub. L. 97–22, §4(h)(1), inserted reference to the Coast Guard in column heading and inserted references to Rear admiral (upper half) (Coast Guard) and Rear admiral (lower half) (Coast Guard).

Subsec. (c). Pub. L. 97–22, §4(h)(2), inserted ''of the Army, Navy, Air Force, and Marine Corps'' after ''Rank among officers''.

Subsec. (d)(1). Pub. L. 97–22, §4(h)(3)(A), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''officer'' in two places.

Subsec. (d)(3). Pub. L. 97–22, §4(h)(3)(B), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''(other than a warrant officer)''.

1980—Pub. L. 96–513 completely revised section to restructure and redefine various ranks of commissioned officers of the Army, Air Force, Marine Corps, and Navy and relationships of officers in those ranks among themselves.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Rank of officers for pay purposes, see sections 201, 202, 403, 414 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 624, 742, 12206, 14006, 14308 of this title.

§ 742. Rank: warrant officers

(a) Among warrant officer grades, warrant officer grades of a higher numerical designation are senior to warrant officer grades of a lower numerical designation.

(b) Rank among warrant officers of the same grade, and date of rank of warrant officers, is determined in the same manner as prescribed in section 741 of this title for officers in grades above warrant officer grades.

(Added Pub. L. 102–190, div. A, title XI, §1114(a), Dec. 5, 1991, 105 Stat. 1502.)

PRIOR PROVISIONS

A prior section 742, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to rank of regular officers and reserve officers, prior to repeal by Pub. L. 85–861, §36B(4), Sept. 2, 1958, 72 Stat. 1570.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

CROSS REFERENCES

Grades of warrant officers, see section 571 of this title.

Rank of warrant officers—

Air Force, see section 8575 of this title.

Army, see section 3575 of this title.

§743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps

The Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active-duty list of the Army, Navy, Air Force, and Marine Corps, except the Chairman and the Vice Chairman of the Joint Chiefs of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34; Dec. 12, 1980, Pub. L. 96–513, title I, §501(11), 94 Stat. 2908; Oct. 1, 1986, Pub. L. 99–433, title II, §202(b), 100 Stat. 1010; Dec. 4, 1987, Pub. L. 100–180, div. A, title XIII, §1314(a)(2), (b)(5)(A), 101 Stat. 1175.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
743	5:626c(b).	July 26, 1947, ch. 343, §208(b), 61 Stat. 503; Sept. 19, 1951, ch. 407, §402, 65 Stat. 333.

5:626c(b) (1st sentence) is omitted as superseded by sections 8031(a)(1) and 8034(a) of this title. 5:626c(b) (2d sentence) is omitted as covered by section 8034(d) of this title. 5:626c(b) (3d and 4th sentences) is omitted as executed. 5:626c(b) (5th sentence) is omitted as covered by section 8034(b) of this title. 5:626c(b) (proviso of last sentence) is omitted as executed, since the incumbents to whom it is applied no longer hold the offices mentioned. The exception as to the Chairman of the Joint Chiefs of Staff is included because of section 142(c) of this title. The words ''and the Marine Corps'' are inserted, since under section 5081 of this title the Chief of Naval Operations takes precedence over all other officers of the naval service.

AMENDMENTS

1987—Pub. L. 100–180, §1314(b)(5)(A), inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in section catchline.

Pub. L. 100–180, §1314(a)(2), made technical correction in directory language of Pub. L. 99–433. See 1986 Amendment note below.

1986—Pub. L. 99–433, as amended by Pub. L. 100–180, §1314(a)(2), inserted reference to the Commandant of the Marine Corp and the Vice Chairman of the Joint Chiefs of Staff.

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1314(e)(1) of Pub. L. 100–180 provided that: ''The amendments made by subsection (a) [amending this section, sections 2431 to 2434 of this title, and provisions set out as notes under sections 111 and 3033 of this title] shall apply as if included in the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433).''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Chief of Naval Operations, see section 5033 of this title.

Chief of Staff of the Air Force, see section 8033 of this title.

Chief of Staff of the Army, see section 3033 of this title.

Commandant of the Marine Corps, see section 5043 of this title.

Rank of Chairman of Joint Chiefs of Staff, see section 152 of this title.

§744. Physician to White House: assignment; grade

An officer of the Medical Corps of the Army, or a medical officer of the Air Force, who is below the grade of colonel and who is assigned to duty as physician to the White House has the rank, pay, and allowances of colonel while so serving. An officer of the Medical Corps of the Navy who is below the grade of captain and who is assigned to that duty has the rank, pay, and allowances of captain while so serving.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
744	10:515. 34:251a.	Apr. 4, 1930, ch. 104, 46 Stat. 140.

The word ''temporary'', in 10:515 and 34:251a, is omitted as surplusage.

[§745. Repealed. Pub. L. 102–190, div. A, title XI, §1114(b), Dec. 5, 1991, 105 Stat. 1502]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to ranking of warrant officers. See section 742 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join

When different commands of the Army, Navy, Air Force, Marine Corps, and Coast Guard join or serve together, the officer highest in rank in the Army, Navy, Air Force, Marine Corps, or Coast Guard on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President.

(Added Pub. L. 90–235, §5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

§749. Command: commissioned officers in same grade or corresponding grades on duty at same place

(a) When the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, has on duty in the same area, field command, or organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.

(b) When officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard are on duty in the same area, field, command, or organiza-

tion and two or more commissioned officers of different services, who are otherwise eligible to command, have the same grade or corresponding grades, the President may assign the command without regard to rank in that grade.

(Added Pub. L. 90–235, § 5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

DELEGATION OF AUTHORITY

For delegation of authority of President under this section, see section 1 of Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

§ 750. Command: retired officers

A retired officer has no right to command except when on active duty.

(Added Pub. L. 96–513, title I, § 108, Dec. 12, 1980, 94 Stat. 2870.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 45—THE UNIFORM

Sec.
771. Unauthorized wearing prohibited.
771a. Disposition on discharge.
772. When wearing by persons not on active duty authorized.
773. When distinctive insignia required.
774. Religious apparel: wearing while in uniform.
775. Issue of uniform without charge.
776. Applicability of chapter.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title III, § 377(b), Oct. 23, 1992, 106 Stat. 2387, added item 775 and redesignated former item 775 as 776.

1987—Pub. L. 100–180, div. A, title V, § 508(b), Dec. 4, 1987, 101 Stat. 1087, added item 774 and redesignated former item 774 as 775.

1968—Pub. L. 90–235, § 8(1)(B), Jan. 2, 1968, 81 Stat. 764, added item 771a.

CROSS REFERENCES

Particular provisions relating to uniforms—
Coast Guard, see sections 483 to 485, 891, 892 of Title 14, Coast Guard.
National Guard, see sections 701, 705 of Title 32, National Guard.
Naval service, see sections 6155, 6156 of this title.

§ 771. Unauthorized wearing prohibited

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, or Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
771	10:1393 (1st par., less provisos).	June 3, 1916, ch. 134, § 125 (1st par., less provisos), 39 Stat. 216.

The words ''Except as otherwise provided by law'' are inserted to give effect to exceptions in other revised sections of this title and to provisions of other laws giving such organizations as the Coast and Geodetic Survey and the Public Health Service permission to wear military uniforms under certain conditions.

CROSS REFERENCES

Public Health Service, wearing of uniforms, see section 300cc–9 of Title 42, The Public Health and Welfare.

Punishment for unauthorized wearing, see section 702 of Title 18, Crimes and Criminal Procedure.

§ 771a. Disposition on discharge

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.

(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than $30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than $25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, or the District of Columbia of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32.

(Added Pub. L. 90–235, § 8(1)(A), Jan. 2, 1968, 81 Stat. 763; amended Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 772. When wearing by persons not on active duty authorized

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade.

(d) A person who is discharged honorably or under honorable conditions from the Army,

Navy, Air Force, or Marine Corps may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Department of Veterans Affairs may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, or Marine Corps, a civilian may wear the uniform prescribed by that armed force.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Nov. 8, 1985, Pub. L. 99–145, title XIII, §1301(a)(1), 99 Stat. 735; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, §1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
772(a)	10:1393 (words before 1st semicolon of 1st proviso of 1st par.).	June 3, 1916, ch. 134, §12 (words before 4th semicolon, and words after 7th semicolon, of 1st proviso of 1st par.; and last proviso of last par.), 39 Stat. 216; July 9, 1918, ch. 143, subch. XVII, §10 (last proviso), 40 Stat. 892; June 4, 1920, ch. 228, §8, 41 Stat. 836; June 6, 1942, ch. 382, 56 Stat. 328; May 24, 1949, ch. 139, §15(b) (last proviso), 63 Stat. 91; July 6, 1953, ch. 180, §1, 67 Stat. 140.
772(b).	10:1393 (15th through 18th words after 1st semicolon of 1st proviso of 1st par.).	
772(c).	10:1023 (1st sentence).	
	34:43g(i).	
	34:389 (less 1st and 3d sentences).	
772(d).	10:1393 (words between 3d and 4th semicolons of 1st proviso of 1st par.).	
	10:1028b.	
772(e).	10:1393 (words between 2d and 3d semicolons of 1st proviso of 1st par.).	
	34:399d.	R.S. 1256 (1st sentence).
772(f)	10:1393 (words between 8th and 9th semicolons of 1st proviso of 1st par.).	R.S. 1457 (less 1st and 3d sentences); May 5, 1950, ch. 169, §14(f), 64 Stat. 147.
772(g)	10:1393 (last proviso of last par.).	Apr. 16, 1947, ch. 38, §207(j), 61 Stat. 50; as redesignated (i); Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882.
772(h).	10:1393 (words between 7th and 8th semicolons of 1st proviso of 1st par.).	
772(i)	10:1393 (words after 9th semicolon of 1st proviso of 1st par.).	June 21, 1930, ch. 563, §2; restated Aug. 4, 1949, ch. 393, §12, 63 Stat. 559; July 6, 1953, ch. 180, §2, 67 Stat. 140.
772(j).	10:1393 (words between 1st and 2d semicolons of 1st proviso of 1st par., less 15th through 18th words).	

In subsections (a), (b), (d), (f), (g), (h), (i), and (j), the rules stated in the corresponding clauses of the first proviso of the first paragraph, and the last proviso of the last paragraph, of 10:1393, are restated to make positive the authority of the persons described in those subsections to wear the uniform prescribed for the appropriate organization or activity.

In subsection (c), the words ''bear the title'', in 34:43g(i), applicable only to retired officers of the Navy Nurse Corps, are made applicable to other retired officers, to make explicit what has heretofore been implicit, that a retired officer may continue to bear the title of his retired grade.

In subsection (e), the words between the second and third semicolons of the first proviso of the first paragraph of 10:1393 are omitted as superseded by 10:1028b and 34:399d, which authorize the wearing of the uniform by members who are discharged honorably or under honorable conditions. The words ''when authorized by regulations prescribed by'' are substituted for the words ''occasions authorized by regulations of''.

In subsection (f), the words ''while portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production'' are substituted for the words ''any person from wearing the uniform of the United States Army, Navy, or Marine Corps, in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character''.

In subsection (g), the word ''resident'' is substituted for the word ''members'', since the word ''members'' related to members of the now disbanded National Home for disabled volunteer soldiers to which were admitted ''members'' of an organization called the ''Disabled Volunteer Soldiers''. The words ''veterans' home'' are substituted for the words ''national home for veterans'', since there are now no ''national homes'' administered by the Veterans' Administration.

In subsection (h), the words ''authorized and'' and ''for wear during such course of instruction'' are omitted as surplusage. The word ''naval'' is omitted as covered by the word ''military''. The words ''Army, Navy, Air Force, or Marine Corps'' are substituted for the words ''military or naval authorities''. The words ''that armed force'' are substituted for the words ''such military or naval authorities''.

In subsection (i), the words ''Air Force school'' are substituted for the words ''Air Force advanced flying schools or Air Force service schools''. The words ''in such manner'' are omitted as surplusage.

AMENDMENTS

1989—Subsec. (g). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (c). Pub. L. 99–145 struck out provisions relating to a retired officer of the Navy Nurse Corps.

EX. ORD. NO. 10554. DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS

Ex. Ord. No. 10554, Aug. 18, 1954, 19 F.R. 5295, provided: The authority vested in the President (1) by section 125 of the act of June 3, 1916, 39 Stat. 216, as amended by the first section of the act of July 6, 1953, 67 Stat. 140, and (2) by section 2 of the act of June 21, 1930, 46 Stat. 793, as amended by section 2 of said act of July 6, 1953, to prescribe regulations authorizing occasions upon which the uniform may be worn by persons who have served honorably in the armed forces of the United States in time of war is hereby delegated to the Secretary of Defense so far as it pertains to the uniforms of the Army, Navy, Air Force, and Marine Corps, and to the Secretary of the Treasury so far as it pertains to the uniform of the Coast Guard.

DWIGHT D. EISENHOWER.

CROSS REFERENCES

Coast Guard, right to wear uniform, see section 483 of Title 14, Coast Guard.

Provisions respecting sale of exterior articles of uniform to persons discharged honorably from Army or Air Force as not modifying this section, see sections 4621, 9621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 771a, 4621, 6156, 9621 of this title.

§ 773. When distinctive insignia required

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Mar. 28, 1958, Pub. L. 85–355, 72 Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
773(a)	10:1393 (words between 4th and 7th semicolons of 1st proviso, and 2d proviso, of 1st par.).	June 3, 1916, ch. 134, § 125 (words between 4th and 7th semicolons of 1st proviso, and 2d and last provisos, of 1st par.), 39 Stat. 216; June 4, 1920, ch. 228, § 8, 41 Stat. 836; Sept. 15, 1951, ch. 402, 65 Stat. 323; July 6, 1953, ch. 180, § 1, 67 Stat. 140.
773(b).	10:1393 (last proviso of 1st par.).	

In subsection (a), the word ''mark'' is omitted as surplusage.

In subsection (a)(2), the words ''persons discharged honorably or under honorable conditions from'' are substituted for the words ''entirely of honorably discharged officers or enlisted men, or both, of''. The words ''Regular or Volunteer'' are omitted as surplusage. The words ''when authorized by regulations prescribed by'' are substituted for the words ''upon occasions authorized by regulations of''.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–355 added subsec. (c).

CROSS REFERENCES

Provisions respecting sale of exterior articles of uniform to person discharged honorably from Army or Air Force as not modifying this section, see sections 4621, 9621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4621, 6156, 9621 of this title.

§ 774. Religious apparel: wearing while in uniform

(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

(1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or

(2) if the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

(d) RELIGIOUS APPAREL DEFINED.—In this section, the term ''religious apparel'' means apparel the wearing of which is part of the observance of the religious faith practiced by the member.

(Added Pub. L. 100–180, div. A, title V, § 508(a)(2), Dec. 4, 1987, 101 Stat. 1086.)

PRIOR PROVISIONS

A prior section 774 was renumbered section 776 of this title.

REGULATIONS

Section 508(c) of Pub. L. 100–180 provided that: ''The Secretary concerned shall prescribe the regulations required by section 774(c) of title 10, United States Code, as added by subsection (a), not later than the end of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

§ 775. Issue of uniform without charge

(a) ISSUE OF UNIFORM.—The Secretary concerned may issue a uniform, without charge, to any of the following members:

(1) A member who is being repatriated after being held as a prisoner of war.

(2) A member who is being treated at or released from a medical treatment facility as a consequence of being wounded or injured during military hostilities.

(3) A member who, as a result of the member's duties, has unique uniform requirements.

(4) Any other member, if the Secretary concerned determines, under exceptional circum-

stances, that the issue of the uniform to that member would significantly benefit the morale and welfare of the member and be advantageous to the armed force concerned.

(b) RETENTION OF UNIFORM AS A PERSONAL ITEM.—Notwithstanding section 771a of this title, a uniform issued to a member under this section may be retained by the member as a personal item.

(Added Pub. L. 102–484, div. A, title III, §377(a)(2), Oct. 23, 1992, 106 Stat. 2386.)

PRIOR PROVISIONS

A prior section 775 was renumbered section 776 of this title.

§776. Applicability of chapter

This chapter applies in—

(1) the United States;

(2) the territories, commonwealths, and possessions of the United States; and

(3) all other places under the jurisdiction of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36, §774; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, §1343(a)(1), 100 Stat. 3992; Apr. 21, 1987, Pub. L. 100–26, §3(6), 101 Stat. 273; renumbered §775, Dec. 4, 1987, Pub. L. 100–180, div. A, title V, §508(a)(1), 101 Stat. 1086; renumbered §776, Oct. 23, 1992, Pub. L. 102–484, div. A, title III, §377(a)(1), 106 Stat. 2386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
774	10:1393 (less 1st and last pars.).	June 3, 1916, ch. 134, §125 (less 1st and last pars.), 39 Stat. 216; Apr. 15, 1948, ch. 188, 62 Stat. 172; June 25, 1948, ch. 645, §21 (as applicable to §125 of the Act of June 3, 1916, ch. 134), 62 Stat. 864; May 24, 1949, ch. 139, §§15(b) (less last par.), 142 (as applicable to the Act of Apr. 15, 1948, ch. 188), 63 Stat. 91, 110.

The words ''the Canal Zone, Guam, American Samoa, and the Virgin Islands as well as to * * * other'' are omitted as covered by the words ''possessions, and all other places under its jurisdiction''.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 775 of this title as this section.

1987—Pub. L. 100–180 renumbered section 774 of this title as this section.

Pub. L. 100–26 amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, as amended by Pub. L. 100–26, amended section generally. Prior to amendment, section read as follows: ''This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(a) of Pub. L. 100–26 provided that: ''The amendments made by section 3 [amending this section and sections 1032, 1408, 1450, 1588, 2007, 2364, and 5150 of this title, and section 4703 of Title 20, Education, and amending provisions set out as a note under section 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Law 99–661 when enacted on November 14, 1986.''

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

Subchapter		Sec.	Art.
I.	General Provisions	801	1
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AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(B), Oct. 5, 1994, 108 Stat. 2832, substituted ''United States Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item for subchapter XII.

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(1), Nov. 29, 1989, 103 Stat. 1576, added item for subchapter XII.

1983—Pub. L. 98–209, §5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted ''IX. Post-Trial Procedure and Review of Courts-Martial'' for ''IX. Review of Courts-Martial''.

1958—Pub. L. 85–861, §33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

CROSS REFERENCES

Retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 654, 951, 955, 1037, 1044a, 1058, 1059, 1094, 1552, 1553, 2783, 5148 of this title; title 5 sections 8312, 8313, 8331, 8401; title 18 sections 3551, 4247; title 28 section 535; title 37 section 559; title 42 sections 217, 10601; title 49 section 1155; title 50 App. section 473.

SUBCHAPTER I—GENERAL PROVISIONS

Sec.	Art.	
801.	1.	Definitions.
802.	2.	Persons subject to this chapter.
803.	3.	Jurisdiction to try certain personnel.
804.	4.	Dismissed officer's right to trial by court-martial.
805.	5.	Territorial applicability of this chapter.
806.	6.	Judge advocates and legal officers.
806a.	6a.	Investigation and disposition of matters pertaining to the fitness of military judges.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(2), Nov. 29, 1989, 103 Stat. 1576, added item 806a.

§801. Article 1. Definitions

In this chapter:

(1) The term ''Judge Advocate General'' means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a service in the Navy, the General Counsel of the Department of Transportation.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service

in the Navy, shall be considered as one armed force.

(3) The term ''commanding officer'' includes only commissioned officers.

(4) The term ''officer in charge'' means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term ''superior commissioned officer'' means a commissioned officer superior in rank or command.

(6) The term ''cadet'' means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term ''midshipman'' means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term ''military'' refers to any or all of the armed forces.

(9) The term ''accuser'' means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term ''military judge'' means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) The term ''law specialist'' means a commissioned officer of the Coast Guard designated for special duty (law).

(12) The term ''legal officer'' means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term ''judge advocate'' means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) The term ''record'', when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Oct. 15, 1966, Pub. L. 89–670, § 10(g), 80 Stat. 948; Dec. 8, 1967, Pub. L. 90–179, § 1(1), (2), 81 Stat. 545; Oct. 24, 1968, Pub. L. 90–632, § 2(1), 82 Stat. 1335; Dec. 6, 1983, Pub. L. 98–209, §§ 2(a), 6(a), 97 Stat. 1393, 1400; Dec. 4, 1987, Pub. L. 100–180, div. A, title XII, § 1231(17), 101 Stat. 1161; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1233(f)(1), 102 Stat. 2057.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
801	50:551 (less (9)).	May 5, 1950, ch. 169, § 1 (Art. 1 (less (9))), 64 Stat. 108.

The words ''In this chapter'' are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word ''chapter'' is substituted for the word ''code''.

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words ''commissioned officer'' are substituted for the word ''officer'' for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)–(7), and (9)–(12) of the revised section, the word ''means'' is substituted for the words ''shall be construed to refer to'' and ''shall be construed to refer * * * to''.

In clause (1), the words ''service in'' are substituted for the words ''part of'' to conform to section 1 of title 14. The words ''Department of the Treasury'' are substituted for the words ''Treasury Department''.

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word ''refers'' is substituted for the words ''shall be construed to refer''.

In clause (12), the words ''Marine Corps'' are inserted to make explicit that the clause applies to the Marine Corps. The word ''commissioned'' is inserted for clarity.

AMENDMENTS

1988—Cl. (1). Pub. L. 100–456 substituted ''term 'Judge'' for ''term 'judge''.

1987—Cls. (1), (3) to (14). Pub. L. 100–180 inserted ''The term'' after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983—Cl. (13). Pub. L. 98–209, § 2(a), added officers of the Coast Guard who are designated as law specialists to definition of ''Judge Advocate''.

Cl. (14). Pub. L. 98–209, § 6(a), added cl. (14).

1968—Cl. (10). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' as term being defined and inserted reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90–179, § 1(1), struck out ''Navy or'' before ''Coast Guard''.

Cl. (13). Pub. L. 90–179, § 1(2), added cl. (13).

1966—Pub. L. 89–670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of ''Judge Advocate General'' applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 12(a) of Pub. L. 98–209 provided that:

''(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

''(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

''(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in

which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(4) The amendments made by sections 5, 6, and 7 [amending this section and sections 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of Pub. L. 90–632 provided that:

''(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [October 1968].

''(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

''(c) The amendment made by paragraph (33) [amending section 873 of this title] shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89–670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE

Section 51 of act Aug. 10, 1956, provided that: ''Chapter 47 of title 10, United States Code, enacted by section 1 of this Act, takes effect January 1, 1957.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, §801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: ''This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the 'Military Justice Amendments of 1986'.''

SHORT TITLE OF 1983 AMENDMENT

Section 1(a) of Pub. L. 98–209 provided that: ''This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title, and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–81, §1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: ''This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838, 867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Amendments of 1981'.''

SHORT TITLE OF 1968 AMENDMENT

Section 1 of Pub. L. 90–632 provided: ''That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'.''

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90–179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties, and proceedings not affected by Pub. L. 90–179 establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90–179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Section 49(e) of act Aug. 10, 1956, provided that: ''In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.''

CROSS REFERENCES

Appointment and duties—
General Counsel of Department of Transportation, see section 102 of Title 49, Transportation.
Judge Advocates General of the Army, Navy, and Air Force, see sections 3037, 5148 and 8037 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1044 of this title; title 42 section 665.

§802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; June 25, 1959, Pub. L. 86–70, § 6(b), 73 Stat. 142; July 12, 1960, Pub. L. 86–624, § 4(b), 74 Stat. 411; Sept. 7, 1962, Pub. L. 87–651, title I, § 104, 76 Stat. 508; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 801(a), 93 Stat. 810; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(24), 94 Stat. 2922; Dec. 6, 1983, Pub. L. 98–209, § 13(a), 97 Stat. 1408; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, § 804(a), 100 Stat. 3906; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802	50:552.	May 5, 1950, ch. 169, § 1 (Art. 2), 64 Stat. 109.

In clause (1), the words ''Members of'' are substituted for the words ''All persons belonging to''. The words ''all'' and ''the same'' are omitted as surplusage. The word ''when'' is inserted after the word ''dates''.

In clauses (1) and (8), the words ''of the United States'' are omitted as surplusage.

In clause (3), the words ''Members of a reserve component'' are substituted for the words ''Reserve personnel''. The word ''orders'' in the last clause is omitted as surplusage.

In clause (4), the word ''receive'' is omitted as surplusage.

In clauses (4) and (5), the word ''members'' is substituted for the word ''personnel''.

In clause (8), the word ''members'' is substituted for the word ''personnel''.

In clauses (11) and (12), the word ''outside'' is substituted for the word ''without'' wherever it occurs. The words ''the continental limits of'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words ''the provision of'', ''all'', and ''territories'' are omitted as surplusage.

In clause (12), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802(11), (12).	50:552(11) and (12).	Aug. 1, 1956, ch. 852, § 23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

AMENDMENTS

1988—Subsec. (a)(11), (12). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''the Commonwealth''.

1986—Subsec. (a)(3). Pub. L. 99–661, § 804(a)(1), substituted ''on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service'' for ''they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter''.

Subsec. (d). Pub. L. 99–661, § 804(a)(2), added subsec. (d).

1983—Subsec. (a)(11), (12). Pub. L. 98–209, §13(a)(1), substituted ''outside the Canal Zone'' for ''outside the following: the Canal Zone'' and inserted ''the Commonwealth of'' before ''Puerto Rico''.

Subsec. (b). Pub. L. 98–209, §13(a)(2), struck out ''of this section'' after ''subsection (a)''.

1980—Subsec. (a)(8). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1979—Pub. L. 96–107 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in cl. (8).

1962—Pub. L. 87–651 inserted ''Guam,'' after ''Puerto Rico,'' in cls. (11) and (12).

1960—Pub. L. 86–624 struck out ''the main group of the Hawaiian Islands,'' before ''Puerto Rico'' in cls. (11) and (12).

1959—Pub. L. 86–70 struck out ''that part of Alaska east of longitude 172 degrees west,'' before ''the Canal Zone'' in cls. (11) and (12).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(e) of Pub. L. 99–661 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99–661, set out below].''

Section 808 of Pub. L. 99–661 provided that: ''Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806, respectively, of this title], this title and the amendments made by this title [enacting section 850a of this title, amending this section and sections 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under this section and sections 801, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

''(2) the date specified in an Executive order for such amendments to take effect.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while for-

merly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, § 804(b), 100 Stat. 3907; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1063, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
803(a)	50:553(a).	May 5, 1950, ch. 169, § 1 (Art. 3), 64 Stat. 109.
803(b)	50:553(b).	
803(c)	50:553(c).	

In subsection (a), the words ''the provisions of'' are omitted as surplusage. The words ''no * * * may'' are substituted for the words ''any * * * shall not''. The word ''for'' is substituted for the word ''of'' before the words ''five years''. The words ''of a State, a Territory, or'' are substituted for the words ''any State or Territory thereof or of''. The word ''court-martial'' is substituted for the word ''courts-martial''.

In subsection (b), the words ''Each person'' are substituted for the words ''All persons''. The words ''who is later'' are substituted for the word ''subsequently''. The words ''his discharge is'' are substituted for the words ''said discharge shall * * * be''. The words ''the provisions of'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall * * * be''. The words ''he is'' are substituted for the words ''they shall be''. The word ''before'' is substituted for the words ''prior to''.

In subsection (c), the words ''No * * * may'' are substituted for the words ''Any * * * shall not''. The word ''later'' is substituted for the word ''subsequent''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.''

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1067 of Pub. L. 102–484 provided that: ''The amendments made by sections 1063, 1064, 1065, and 1066 [amending this section and sections 857, 863, 911, 918, and 920 of this title] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply with respect to offenses committed on or after that date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99–661, set out as notes under section 802 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
804(a)	50:554(a).	May 5, 1950, ch. 169, §1 (Art. 4), 64 Stat. 110.
804(b)	50:554(b).	
804(c)	50:554(c).	
804(d)	50:554(d).	

In subsection (a), the word ''If'' is substituted for the word ''When''. The word ''commissioned'' is inserted before the word ''officer''. The word ''considered'' is substituted for the word ''held''.

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''If'' is substituted for the word ''Where''. The words ''the authority of'' are omitted as surplusage. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not to a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position'' for clarity. The word ''receive'' is omitted as surplusage.

In subsection (d), the word ''If'' is substituted for the word ''When''. The words ''he has no'' are substituted for the words ''there shall not be a''.

CROSS REFERENCES

Limitations on dismissal of commissioned officers, see section 1161 of this title.

§805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
805	50:555.	May 5, 1950, ch. 169, §1 (Art. 5), 64 Stat. 110.

The word ''applies'' is substituted for the words ''shall be applicable''.

§806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Dec. 8, 1967, Pub. L. 90–179, §1(3), 81 Stat. 545; Oct. 24, 1968, Pub. L. 90–632, §2(2), 82 Stat. 1335; Dec. 6, 1983, Pub. L. 98–209, §2(b), 97 Stat. 1393; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, §807(a), 100 Stat. 3909.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
806(a)	50:556(a).	May 5, 1950, ch. 169, §1 (Art. 6), 64 Stat. 110.
806(b)	50:556(b).	
806(c)	50:556(c).	

In subsection (b), the word ''entitled'' is substituted for the word ''authorized''.

In subsection (c), the words ''may later'' are substituted for the words ''shall subsequently''.

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–209 substituted ''Air Force, and'' for ''and Air Force and law specialists of the''.

1968—Subsec. (c). Pub. L. 90–632 substituted ''military judge'' for ''law officer''.

1967—Subsec. (a). Pub. L. 90–179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 807(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section]—

''(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

''(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Judge Advocate General's Corps of the Army, see section 3072 of this title.

Judge Advocates of the Air Force, see section 8067 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge's position. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committees on Armed Services of the Senate and House of Representatives.

(Added Pub. L. 101–189, div. A, title XIII, § 1303, Nov. 29, 1989, 103 Stat. 1576.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec.	Art.	
807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged with offenses.
811.	11.	Reports and receiving of prisoners.
812.	12.	Confinement with enemy prisoners prohibited.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
807(a)	50:561(a).	May 5, 1950, ch. 169, § 1 (Art. 7), 64 Stat. 111.
807(b)	50:561(b).	
807(c)	50:561(c).	

In subsection (a), the words "into custody" and "of a person" are transposed.

In subsection (c), the words "All" and "shall" are omitted as surplusage. The word "Commissioned" is inserted before the word "officers" for clarity. The word "therein" is substituted for the words "in the same".

CROSS REFERENCES

Arrest and commitment, see section 3041 et seq. of Title 18, Crimes and Criminal Procedure.

Article to be explained, see section 937 of this title.

Expenses and rewards for apprehension and delivery of deserters, prisoners, and members absent without leave, see section 956 of this title.

Expenses for apprehension and delivery of deserters, stragglers, and prisoners of the Navy, see section 7214 of this title.

Resistance, breach of arrest, and escape, punishment, see section 895 of this title.

Unlawful detention, punishment, see section 897 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
808	50:562.	May 5, 1950, ch. 169, § 1 (Art. 8), 64 Stat. 111.

The word "may" is substituted for the words "It shall be lawful for * * * to". The words "a State, Territory, Commonwealth, or possession, or the District of Columbia" are substituted for the words "any State, District, Territory, or possession of the United States". The words "of the United States", before the words "and deliver", are omitted as surplusage. The words "those forces" are substituted for the words "the armed forces of the United States", after the words "custody of".

CROSS REFERENCES

Arrest and commitment, see section 3041 et seq. of Title 18, Crimes and Criminal Procedure.

Article to be explained, see section 937 of this title.

Resistance, breach of arrest, and escape, punishment, see section 895 of this title.

Unlawful detention, punishment, see section 897 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or

written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
809(a)	50:563(a).	May 5, 1950, ch. 169, §1 (Art. 9), 64 Stat. 111.
809(b)	50:563(b).	
809(c)	50:563(c).	
809(d)	50:563(d).	
809(e)	50:563(e).	

In subsection (b), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The words ''member'' and ''members'', respectively, are substituted for the words ''person'' and ''persons''.

In subsection (c), the words ''A commissioned'' are substituted for the word ''An'' for clarity. The word ''commissioned'' is inserted after the word ''another'' for clarity.

In subsection (d), the word ''may'' is substituted for the word ''shall''.

In subsection (e), the word ''limits'' is substituted for the words ''shall be construed to limit''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Forwarding of charges, time of, see section 833 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§810. Art. 10. Restraint of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
810	50:564.	May 5, 1950, ch. 169, §1 (Art. 10), 64 Stat. 111.

The word ''he'' is substituted for the words ''such person''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enlisted members required to make up time lost, see section 972 of this title.

Summary courts-martial, jurisdiction of, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
811(a)	50:565(a).	May 5, 1950, ch. 169, §1 (Art. 11), 64 Stat. 112.
811(b)	50:565(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
812	50:566.	May 5, 1950, ch. 169, §1 (Art. 12), 64 Stat. 112.

The words ''of the United States'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Nov. 20, 1981, Pub. L. 97–81, §3, 95 Stat. 1087.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
813	50:567.	May 5, 1950, ch. 169, §1 (Art. 13), 64 Stat. 112.

The words ''the provisions of'' are omitted as surplusage. The word ''results'' is changed to the singular. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1981—Pub. L. 97–81 substituted ''No person, while being held for trial, may be subjected'' for ''Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each person held as the result of a court-martial sentence announced on or after that date, see section 7(a) and (b)(2) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
814(a)	50:568(a).	May 5, 1950, ch. 169, §1 (Art. 14), 64 Stat. 112.
814(b)	50:568(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (b), the word ''interrupts'' is substituted for the words ''shall be held to interrupt''. The word ''his'' is substituted for the words ''the said court-martial''.

REGULATIONS FOR DELIVERY OF MILITARY PERSONNEL TO CIVIL AUTHORITIES WHEN CHARGED WITH CERTAIN OFFENSES

Pub. L. 100–456, div. A, title VII, §721, Sept. 29, 1988, 102 Stat. 2001, provided that:

''(a) Not later than 90 days after the date of enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall ensure that the Secretaries of the military departments have issued uniform regulations pursuant to section 814 of title 10, United States Code, to provide for the delivery of members of the Armed Forces to civilian authority when such members have been accused of offenses against civil authority. Such regulations shall specifically provide for the delivery of such members to civilian authority, in appropriate cases, when such members are accused of parental kidnapping and other similar offenses, including criminal contempt arising from such offenses and from child custody matters, and shall specifically address the special needs for the exercise of the authority contained in section 814 of title 10, United States Code, when members of the Armed Forces assigned overseas are accused of offenses by civilian authorities.

''(b) Not later than 120 days after the enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and House of Representatives a copy of all regulations promulgated under section 814 of title 10, United States Code, as a result of this section and any recommendations that the Secretary may have concerning the need for additional legislation related to the amenability of members of the Armed Forces to civil authority.''

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

Sec. Art.

815. 15. Commanding officer's non-judicial punishment.

§ 815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer or general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, ''correctional custody'' is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture of detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;
(5) extra duties for more than 14 days;
(6) restriction for more than 14 days; or
(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Transportation for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Sept. 7, 1962, Pub. L. 87–648, § 1, 76 Stat. 447; Dec. 8, 1967, Pub. L. 90–179, § 1(4), 81 Stat. 545; Oct. 22, 1968, Pub. L. 90–623, § 2(4), 82 Stat. 1314; Dec. 6, 1983, Pub. L. 98–209, §§ 2(c), 13(b), 97 Stat. 1393, 1408.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
815(a)	50:571(a).	May 5, 1950, ch. 169, § 1 (Art. 15), 64 Stat. 112.
815(b)	50:571(b).	
815(c)	50:571(c).	
815(d)	50:571(d).	
815(e)	50:571(e).	

In subsection (a), the words ''not more than'' are substituted for the words ''a period not to exceed'', ''not to exceed'', and ''a period not exceeding''.

In subsection (a)(1), the words ''and warrant officers'' are omitted, since the word ''officer'', as defined in section 101(14) of this title, includes warrant officers.

In clause (1)(C), the words ''one month's pay'' are substituted for the words ''his pay per month for a period not exceeding one month''.

In subsection (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (c), the word ''subsections'' is substituted for the word ''subdivisions''. The words ''enlisted members'' are substituted for the words ''enlisted persons''.

In subsections (d) and (e), the words ''authority of'' are omitted as surplusage.

In subsection (d), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall have power to * * * to''.

In subsection (e), the words ''is not'' are substituted for the words ''shall not be''.

AMENDMENTS

1983—Pub. L. 98–209, § 13(b)(1), substituted ''non-judicial'' for ''nonjudicial'' in section catchline.

Subsec. (b). Pub. L. 98–209, § 13(b)(2)(A), struck out ''of this section'' after ''subsection (a)'' in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98–209, § 13(b)(2)(B), substituted ''clause (A)'' for ''subsection (b)(2)(A)''.

Subsec. (e). Pub. L. 98–209, § 2(c), substituted ''or a lawyer of the'' for ''of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or''.

1968—Subsec. (e). Pub. L. 90–623 substituted ''or a law specialist or lawyer of the Coast Guard or Department of Transportation'' for ''or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department''.

1967—Subsec. (e). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87–648 redesignated former subsec. (b) as (a), inserted references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary's regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87–648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month's pay may be ordered forfeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month's pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month's pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days' pay, and detention of not more than 14 days' pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i) to (vii) of subpar. (2) (H) upon personnel of his command other than officers, changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included, to authorize extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year, prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount imposable for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively, and in those cases

where forfeiture of pay is combined with detention of pay, defining ''correctional custody'', and struck out provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87–648 substituted ''under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation'' for ''to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b),'' and deleted ''for minor offenses'' after ''an officer in charge may''.

Subsecs. (d), (e). Pub. L. 87–648 added subsec. (d), redesignated former subsec. (d) as (e), inserted provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted ''The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment'' for ''The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected.'' Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 87–648 redesignated former subsec. (e) as (f) and added subsec. (g).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–648 provided that: ''This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [September 1962].''

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enlisted members required to make up lost time, see section 972 of this title.

Statute of limitations, see section 843 of this title.

Summary court-martial, election to refuse commanding officer's punishment, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 843, 937, 2772 of this title.

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

Sec.	Art.	
816.	16.	Courts-martial classified.
817.	17.	Jurisdiction of courts-martial in general.
818.	18.	Jurisdiction of general courts-martial.
819.	19.	Jurisdiction of special courts-martial.
820.	20.	Jurisdiction of summary courts-martial.
821.	21.	Jurisdiction of courts-martial not exclusive.

§816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial, consisting of—

(A) not less than three members; or

(B) a military judge and not less than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) summary courts-martial, consisting of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Oct. 24, 1968, Pub. L. 90–632, §2(3), 82 Stat. 1335; Dec. 6, 1983, Pub. L. 98–209, §3(a), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
816	50:576.	May 5, 1950, ch. 169, §1 (Art. 16), 64 Stat. 113.

The word ''The'' is substituted for the words ''There shall be''. The word ''are'' is substituted for the word ''namely''. The words ''not less than five members'' are substituted for the words ''any number of members not less than five''. The words ''not less than three members'' are substituted for the words ''any number of members not less than three''. The word ''commissioned'' is inserted before the word ''officer'' in clause (3) for clarity.

AMENDMENTS

1983—Par. (1)(B). Pub. L. 98–209 substituted ''orally on the record or in writing'' for ''in writing''.

1968—Pub. L. 90–632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 829, 841 of this title.

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
817(a)	50:577(a).	May 5, 1950, ch. 169, § 1 (Art. 17), 64 Stat. 114.
817(b)	50:577(b).	

In subsection (a), the word ''has'' is substituted for the words ''shall have''.

In subsection (b), the word ''after'' is substituted for the words ''subsequent to''. The words ''the provisions of'' are omitted as surplusage. The words ''department that includes the'' are inserted before the words ''armed force'', since the review is carried out by the department and not by the armed force.

CROSS REFERENCES

Jurisdiction of—
General courts-martial, see section 818 of this title.
Special courts-martial, see section 819 of this title.
Summary courts-martial, see section 820 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 819, 820 of this title.

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90–632, § 2(4), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
818	50:578.	May 5, 1950, ch. 169, § 1 (Art. 18), 64 Stat. 114.

The word ''shall'' is omitted as surplusage wherever it occurs.

AMENDMENTS

1968—Pub. L. 90–632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than six months, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than six months. A bad-conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90–632, § 2(5), 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
819	50:579.	May 5, 1950, ch. 169, § 1 (Art. 19), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''a period exceeding''. The word ''may'' is substituted for the word ''shall'' in the last sentence.

AMENDMENTS

1968—Pub. L. 90–632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Oct. 24, 1968, Pub. L. 90–632, §2(6), 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
820	50:580.	May 5, 1950, ch. 169, §1 (Art. 20), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The word ''may'' is substituted for the word ''shall'' in the second sentence. The words ''the provisions of'' are omitted as surplusage. The word ''If'' is substituted for the word ''Where''. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''pay in excess of''.

AMENDMENTS

1968—Pub. L. 90–632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Confinement not ordinarily ordered for person charged with offense normally tried by summary court-martial, see section 810 of this title.

Inquests; disposition of effects of deceased persons, see sections 4711, 4712, 9711, 9712 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

§821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
821	50:581.	May 5, 1950, ch. 169, §1 (Art. 21), 64 Stat. 115.

The words ''do not deprive'' are substituted for the words ''shall not be construed as depriving''. The words ''with respect to'' are substituted for the words ''in respect of''.

CROSS REFERENCES

Judge Advocate Generals of Army, Navy, and Air Force to receive, revise, and have recorded proceedings of military commissions, see sections 3037, 5148, 8037 of this title.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
825.	25.	Who may serve on courts-martial.
826.	26.	Military judge of a general or special court-martial.
827.	27.	Detail of trial counsel and defense counsel.
828.	28.	Detail or employment of reporters and interpreters.
829.	29.	Absent and additional members.

AMENDMENTS

1968—Pub. L. 90–632, §2(8), Oct. 24, 1968, 82 Stat. 1336, substituted ''Military judge of a general or special court-martial'' for ''Law officer of a general court-martial'' in item 826 (article 26).

§822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of Defense;

(3) the commanding officer of a unified or specified combatant command;

(4) the Secretary concerned;

(5) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Oct. 1, 1986, Pub. L. 99–433, title II, § 211(b), 100 Stat. 1017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
822(a)	50:586(a).	May 5, 1950, ch. 169, § 1 (Art. 22), 64 Stat. 115.
822(b)	50:586(b).	

Subsection (a)(2) is substituted for the words ''the Secretary of a Department''.

In subsection (a)(4), the words ''continental limits of the'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words ''any other commanding officer'' are substituted for the words ''such other commanding officers as may be''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

AMENDMENTS

1986—Subsec. (a)(2) to (9). Pub. L. 99–433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

CROSS REFERENCES

Complaints of wrongs, see section 938 of this title.

Courts of inquiry, authority to convene, see section 935 of this title.

Initial action on record, see section 860 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 164 of this title.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
823(a)	50:587(a).	May 5, 1950, ch. 169, § 1 (Art. 23), 64 Stat. 115.
823(b)	50:587(b).	

In subsection (a)(7), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

CROSS REFERENCES

Initial action on record, see section 860 of this title.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
824(a)	50:588(a).	May 5, 1950, ch. 169, § 1 (Art. 24), 64 Stat. 116.
824(b)	50:588(b).	

In subsection (a)(4), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the words ''only one commissioned'' are substituted for the words ''but one'' for clarity. The word ''considered'' is substituted for the word ''deemed''.

CROSS REFERENCES

Initial action on record, see section 860 of this title.

Inquests, disposition of effects of deceased persons, see sections 4711, 4712, 9711, 9712 of this title.

§ 825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a

commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, ''unit'' means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Oct. 24, 1968, Pub. L. 90–632, §2(7), 82 Stat. 1336; Dec. 6, 1983, Pub. L. 98–209, §§3(b), 13(c), 97 Stat. 1394, 1408; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, §803(a), 100 Stat. 3906.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
825(a)	50:589(a).	May 5, 1950, ch. 169, §1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The word ''is'' is substituted for the words ''shall be''.

In subsections (a), (b), and (c)(1), the words ''with the armed forces'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

In subsection (c), the words ''member'' and ''members'', respectively are substituted for the words ''person'' and ''persons''. The words ''of an armed force'' are inserted for clarity.

In subsection (c)(1), the word ''is'' is substituted for the words ''shall be''. The word ''before'' is substituted for the words ''prior to''. The words ''the accused may not'' are substituted for the words ''no enlisted person shall'', for clarity. The word ''If'' is substituted for the word ''Where''.

In subsection (c)(2), the word ''means'' is substituted for the words ''shall mean''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''may'' is substituted for the word ''shall''. The word ''than'', before the words ''a body'', is omitted as surplusage.

In subsection (d)(1), the word ''may'' is substituted for the word ''shall''. The word ''member'' is substituted for the word ''person''.

In subsection (d)(2), the word ''is'' is substituted for the words ''shall be''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The words ''member of an armed force'' and ''members of the armed forces'', respectively, are substituted for the words ''person'' and ''persons''.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–661 substituted ''has requested orally on the record or in writing'' for ''has requested in writing''.

1983—Subsec. (c)(2). Pub. L. 98–209, §13(c), struck out ''the word'' before '' 'unit' ''.

Subsec. (e). Pub. L. 98–209, §3(b), added subsec. (e).

1968—Subsec. (c)(1). Pub. L. 90–632 inserted requirement that an accused's request for inclusion of enlisted members on his court-martial be made before conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted ''assembled'' for ''convened'' to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(b) of title VIII of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 3(b) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Oct. 24, 1968, Pub. L. 90–632, § 2(9), 82 Stat. 1336; Dec. 6, 1983, Pub. L. 98–209, § 3(c)(1), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
826(a)	50:590(a).	May 5, 1950, ch. 169, § 1 (Art. 26), 64 Stat. 117.
826(b)	50:590(b).	

In subsection (a), the words ''a commissioned'' are substituted for the word ''an'' for clarity. The words ''of the United States'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall be''. The word ''if'' is substituted for the word ''when''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, § 3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98–209, § 3(c)(1)(B), substituted ''in accordance with regulations prescribed under subsection (a). Unless'' for ''by the convening authority, and, unless''.

1968—Pub. L. 90–632 substituted ''military judge'' for ''law officer'' and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90–632 substituted reference to military judge for references to law officer and such law officer's requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90–632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90–632 redesignated former subsec. (b) as (e) and substituted ''military judge'' for ''law officer'' and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Section 3(a) of Pub. L. 90–632 provided that: ''Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.''

CROSS REFERENCES

Authentication of record, see section 854 of this title.

Definition of military judge, see section 801 of this title.

Oath to perform duties faithfully, see section 842 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

Rulings on interlocutory questions, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 801 of this title.

§827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Dec. 8, 1967, Pub. L. 90–179, §1(5), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90–632, §2(10), 82 Stat. 1337; Dec. 6, 1983, Pub. L. 98–209, §§2(d), 3(c)(2), 97 Stat. 1393, 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
827(a)	50:591(a).	May 5, 1950, ch. 169, §1 (Art. 27), 64 Stat. 117.
827(b)	50:591(b).	
827(c)	50:591(c).	

The words, ''detail'' and ''detailed'' are substituted for the words ''appoint'' and ''appointed'' throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word ''and'' is substituted for the words ''together with''. The word ''considers'' is substituted for the word ''deems''. The words ''necessary or'' are omitted as surplusage, since what is necessary is also appropriate. The word ''may'' is substituted for the word ''shall''. The word ''later'' is substituted for the word ''subsequently''.

In subsections (b) and (c), the word ''must'' is substituted for the word ''shall'', since the clauses prescribe conditions and not commands.

In subsection (b), the word ''for'' is substituted for the words ''in the case of''. The words ''person * * * a person who is'' are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98–209, §3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98–209, §3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

Subsec. (b)(1). Pub. L. 98–209, §2(d)(1), substituted ''judge advocate'' for ''judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,''.

Subsec. (c)(3). Pub. L. 98–209, §2(d)(2), struck out '', or a law specialist,'' after ''is a judge advocate''.

1968—Subsec. (a). Pub. L. 90–632, §2(10)(A), substituted ''military judge'' for ''law officer''.

Subsec. (c). Pub. L. 90–632, §2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98–209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Appointment of appellate counsel, see section 870 of this title.

Article to be explained, see section 937 of this title.

Courts of inquiry, appointment of counsel for court, see section 935 of this title.

Duties of trial and defense counsel, see section 838 of this title.

Oath of trial and defense counsel to perform duties faithfully, see section 842 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 819, 838, 870, 937, 5587a of this title; title 14 section 357.

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
828	50:592.	May 5, 1950, ch. 169, § 1 (Art. 28), 64 Stat. 117.

The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words, ''detail or employ'' are substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

CROSS REFERENCES

Judge Advocate Generals of Army, Navy, and Air Force to receive, revise and have recorded proceedings of courts of inquiry and military commissions, see sections 3037, 5148, 8037 of this title.

Oath of reporters and interpreters to perform duties faithfully, see section 842 of this title.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816(1)(B) or (2)(C) of this title (article 16(1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Oct. 24, 1968, Pub. L. 90–632, § 2(11), 82 Stat. 1337; Dec. 6, 1983, Pub. L. 98–209, § 3(d), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
829(a)	50:593(a).	May 5, 1950, ch. 169, § 1 (Art. 29), 64 Stat. 117.
829(b)	50:593(b).	
829(c)	50:593(c).	

In subsections (a), (b), and (c), the word ''may'' is substituted for the word ''shall''.

In subsections (b) and (c), the word ''details'' is substituted for the word ''appoints'', since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209 substituted ''unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause'' for ''except for physical disability or as a result of a challenge or by order of the convening authority for good cause''.

1968—Subsec. (a). Pub. L. 90–632, § 2(11)(A), substituted ''court has been assembled for the trial of the accused'' for ''accused has been arraigned''.

Subsec. (b). Pub. L. 90–632, § 2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90–632, § 2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90–632, § 2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of

Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 839, 841 of this title.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

Sec.	Art.	
830.	30.	Charges and specifications.
831.	31.	Compulsory self-incrimination prohibited.
832.	32.	Investigation.
833.	33.	Forwarding of charges.
834.	34.	Advice of staff judge advocate and reference for trial.
835.	35.	Service of charges.

§ 830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
830(a)	50:601(a).	May 5, 1950, ch. 169, § 1 (Art. 30), 64 Stat. 118.
830(b)	50:601(b).	

In subsection (a), the word ''they'' is substituted for the words ''the same''. The word ''commissioned'' is inserted for clarity.

CROSS REFERENCES

Authority to administer oaths, see section 936 of this title.

Corrections and changes to conform to investigation report, see section 834 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 849 of this title.

§ 831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
831(a)	50:602(a).	May 5, 1950, ch. 169, § 1 (Art 31), 64 Stat. 118.
831(b)	50:602(b).	
831(c)	50:602(c).	
831(d)	50:602(d).	

The word ''may'' is substituted for the word ''shall'' throughout the revised section.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Self-incrimination; protection against, see Const. Amend. 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Nov. 20, 1981, Pub. L. 97–81, § 4(a), 95 Stat. 1088.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
832(a)	50:603(a).	May 5, 1950, ch. 169, § 1 (Art. 32), 64 Stat. 118.
832(b)	50:603(b).	
832(c)	50:603(c).	
832(d)	50:603(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''consideration of the'' and ''a recommendation as to'' are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word ''detailed'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''before'' is substituted for the words ''prior to the time''. The words ''of this section'' are omitted as surplusage.

In subsection (d), the word ''are'' is substituted for the words ''shall be.'' The word ''does'' is substituted for the words ''in any case shall''.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–81 substituted ''The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section'' for ''Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

CROSS REFERENCES

Oaths, administration of; notary, general powers of, see section 936 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 834, 838 of this title.

§ 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
833	50:604.	May 5, 1950, ch. 169, § 1 (Art. 33), 64 Stat. 119.

§ 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Dec. 6, 1983, Pub. L. 98–209, § 4, 97 Stat. 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
834(a)	50:605(a).	May 5, 1950, ch. 169, § 1 (Art. 34), 64 Stat. 119.
834(b)	50:605(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, § 4(a), substituted ''judge advocate'' for ''judge advocate or legal officer'', and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98–209, § 4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred

to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98–209, set out as a note under section 801 of this title.

§835. Art. 35. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Oct. 24, 1968, Pub. L. 90–632, §2(12), 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
835	50:606.	May 5, 1950, ch. 169, §1 (Art. 35), 64 Stat. 119.

The word ''may'' is substituted for the word ''shall''. The word ''after'' is substituted for the words ''subsequent to''.

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 839 of this title.

SUBCHAPTER VII—TRIAL PROCEDURE

Sec.	Art.	
836.	36.	President may prescribe rules.
837.	37.	Unlawfully influencing action of court.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
841.	41.	Challenges.
842.	42.	Oaths.
843.	43.	Statute of limitations.
844.	44.	Former jeopardy.
845.	45.	Pleas of the accused.
846.	46.	Opportunity to obtain witnesses and other evidence.
847.	47.	Refusal to appear or testify.
848.	48.	Contempts.
849.	49.	Depositions.
850.	50.	Admissibility of records of courts of inquiry.
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Number of votes required.
853.	53.	Court to announce action.
854.	54.	Record of trial.

AMENDMENTS

1986—Pub. L. 99–661, div. A, title VIII, §802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a.

§836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Nov. 9, 1979, Pub. L. 96–107, title VIII, §801(b), 93 Stat. 811; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIII, §1301(4), 104 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
836(a)	50:611(a).	May 5, 1950, ch. 169, §1 (Art. 36), 64 Stat. 120.
836(b)	50:611(b).	

In subsection (a), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''under'' is substituted for the words ''in pursuance of''.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–510 struck out ''and shall be reported to Congress'' after ''as practicable''.

1979—Subsec. (a). Pub. L. 96–107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tribunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

CROSS REFERENCES

Competency of accused as witness, see section 3481 of Title 18, Crimes and Criminal Procedure.

Federal Rules of Criminal Procedure, see Title 18, Appendix.

Judge Advocate General of Army, Navy, and Air Force to receive, revise, and have recorded proceedings of courts of inquiry and military commissions, see sections 3037, 5148, 8037 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 839, 906a of this title.

§837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing

authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, Pub. L. 90–632, § 2(13), 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
837	50:612.	May 5, 1950, ch. 169, § 1 (Art. 37), 64 Stat. 120.

The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1968—Pub. L. 90–632 designated existing provisions as subsec. (a), substituted ''military judge'' for ''law officer'', inserted provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from prohibitions of subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define ''reasonably available'' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committees on Armed Services of the Senate and House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward the attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Oct. 24, 1968, Pub. L. 90–632, § 2(14), 82 Stat. 1338; Nov. 20, 1981, Pub. L. 97–81, § 4(b), 95 Stat. 1088; Dec. 6, 1983, Pub. L. 98–209, § 3(e), 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
838(a)	50:613(a).	May 5, 1950, ch. 169, § 1 (Art. 38), 64 Stat. 120.
838(b)	50:613(b).	
838(c)	50:613(c).	
838(d)	50:613(d).	
838(e)	50:613(e).	

In subsection (b), the word ''has'' is substituted for the words ''shall have''. The word ''under'' is substituted for the words ''pursuant to''. The word ''duly'' is omitted as surplusage. The words ''detailed'' and ''who were detailed'' are substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''considers'' is substituted for the words ''may deem''.

AMENDMENTS

1983—Subsec. (b)(6). Pub. L. 98–209, § 3(e)(1), substituted ''the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel'' for ''a convening authority''.

Subsec. (b)(7). Pub. L. 98–209, § 3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98–209, § 3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981—Subsec. (b). Pub. L. 97–81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the ''reasonable availability'' of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge or by the president of a court-martial without a military judge'' for ''president of the court''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Courts of inquiry, representation by counsel, see section 935 of this title.

Vacation of suspension of sentence, representation of probationer at hearing, see section 872 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 832, 937 of this title.

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90–632, § 2(15), 82 Stat. 1338; Nov. 5, 1990, Pub. L. 101–510, div. A, title V, § 541(a), 104 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
839	50:614.	May 5, 1950, ch. 169, § 1 (Art. 39), 64 Stat. 121.

The word ''When'' is substituted for the word ''Whenever''. The words ''deliberates or votes'' are substituted for the words ''is to deliberate or vote''. The word ''may'' is substituted for the word ''shall''. The word ''shall'' is inserted before the words ''be in the presence'' for clarity.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510 inserted at end ''These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).''

1968—Pub. L. 90–632 added subsec. (a), designated existing provisions as subsec. (b), substituted ''military judge'' for ''law officer'', and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 541(e) of Pub. L. 101–510 provided that: ''The amendments made by subsections (a) through (d) [amending this section and section 841 of this title] shall apply only to a court-martial convened on or after the date of the enactment of this Act [Nov. 5, 1990].

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Consultations by military judge with members of court, see section 826 of this title.

Record of trial, see section 854 of this title.

Voting and rulings, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 825, 835 of this title.

§ 840. Art. 40. Continuances

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90–632, § 2(16), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
840	50:615.	May 5, 1950, ch. 169, § 1 (Art. 40), 64 Stat. 121.

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to military judge.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trail counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90–632, § 2(17), 82 Stat. 1339; Nov. 5, 1990, Pub. L. 101–510, div. A, title V, § 541(b)–(d), 104 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
841(a)	50:616(a).	May 5, 1950, ch. 169, § 1 (Art. 41), 64 Stat. 121.
841(b)	50:616(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall'' before the words ''not receive''.

In subsection (b), the word ''the'' is inserted before the word ''trial''. The word ''is'' is substituted for the words ''shall be''. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, § 541(b), designated existing provision as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–510, § 541(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.''

Subsec. (c). Pub. L. 101–510, § 541(d), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–632, § 2(17)(A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90–632, § 2(17)(C), substituted ''military judge'' for ''law officer''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable only to court-martial convened on or after Nov. 5, 1990, see sec-

tion 541(e) of Pub. L. 101–510, set out as a note under section 839 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.
Voting and rulings, see section 851 of this title.

§842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Oct. 24, 1968, Pub. L. 90–632, §2(18), 82 Stat. 1339; Dec. 6, 1983, Pub. L. 98–209, §§2(e), 3(f), 97 Stat. 1393, 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
842(a)	50:617(a).	May 5, 1950, ch. 169, §1 (Art. 42), 64 Stat. 121.
842(b)	50:617(b).	

In subsection (a), the word ''all'' and the word ''the'' before the words ''members'', ''trial'', ''defense'', and ''reporter'' are omitted as surplusage.

In subsections (a) and (b), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of Title 1.

In subsection (b), the words ''Each witness'' are substituted for the words ''All witnesses''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209 struck out '', law specialist,'' after ''judge advocate'' in two places, substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

1968—Subsec. (a). Pub. L. 90–632 struck out requirement that the oath given to court-martial personnel be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

§843. Art. 43. Statute of limitations

(a) A person charged with absence without leave or missing movement in time of war, or with any offense punishable by death, may be tried and punished at any time without limitation.

(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, § 805(a), (b), 100 Stat. 3908.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
843(a)	50:618(a).	May 5, 1950, ch. 169, § 1 (Art. 43), 64 Stat. 121.
843(b)	50:618(b).	
843(c)	50:618(c).	
843(d)	50:618(d).	
843(e)	50:618(e).	
843(f)	50:618(f).	

In subsection (b), the word ''inclusive'' is omitted as surplusage.

In subsections (b) and (c), the words ''is not'' are substituted for the words ''shall not be''.

In subsection (e), the words ''For an'' are substituted for the words ''In the case of any''. The word ''is'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

1986—Subsecs. (a) to (c). Pub. L. 99–661, § 805(a), amended subsecs. (a) to (c) generally. Prior to amendment, subsecs. (a) to (c) read as follows:

''(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

''(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919–932 of this title (articles 119–132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

''(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).''

Subsec. (g). Pub. L. 99–661, § 805(b), added subsec. (g).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(c) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply to an offense committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

CROSS REFERENCES

Absence without leave, see section 886 of this title.
Aiding enemy, see section 904 of this title.
Desertion, see section 885 of this title.
Frauds against United States, see section 932 of this title.
Jurisdiction to try certain personnel, limitations, see section 803 of this title.
Murder, see section 918 of this title.
Mutiny, see section 894 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 803 of this title.

§ 844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
844(a)	50:619(a).	May 5, 1950, ch. 169, § 1 (Art. 44), 64 Stat. 122.
844(b)	50:619(b).	
844(c)	50:619(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''is'' is substituted for the words ''shall be held to be''.

In subsection (c), the word ''after'' is substituted for the words ''subsequent to''. The word ''before'' is substituted for the words ''prior to''. The word ''is'' is substituted for the words ''shall be''.

CROSS REFERENCES

Double jeopardy, prohibition against, see Const. Art. V.

§ 845. Art. 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the mili-

tary judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Oct. 24, 1968, Pub. L. 90–632, §2(19), 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
845(a)	50:620(a).	May 5, 1950, ch. 169, §1 (Art. 45), 64 Stat. 122.
845(b)	50:620(b).	

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, §2(19)(A), substituted ''after arraignment'' for ''arraigned before a court-martial''.

Subsec. (b). Pub. L. 90–632, §2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 852 of this title.

§846. Art. 46. Opportunity to obtain witnesses and other evidence

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
846	50:621.	May 5, 1950, ch. 169, §1 (Art. 46), 64 Stat. 122.

The word ''Commonwealths'' is inserted to reflect the present status of Puerto Rico.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

§847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been duly subpenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the Territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041. 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
847(a)	50:622(a).	May 5, 1950, ch. 169, §1 (Art. 47), 64 Stat. 123.
847(b)	50:622(b).	
847(c)	50:622(c).	
847(d)	50:622(d).	

In subsection (a), the word ''Any'' is substituted for the word ''Every''. The word ''is'' is substituted for the words ''shall be deemed''.

In subsection (b), the words ''named in subsection (a)'' are substituted for the words ''denounced by this article''. The words ''Territories, Commonwealths, or'' are substituted for the word ''Territorial''. The words ''not more than'' are substituted for the words ''a period not exceeding''.

In subsection (c), the words ''It shall be the duty of * * * to'' are omitted as surplusage. The words ''United States Attorney'' are substituted for the words ''United States district attorney'', to conform to the terminology of section 501 of title 28. The word ''shall'' is inserted after the word ''jurisdiction''.

CROSS REFERENCES

Per diem and mileage of witnesses generally, see section 1821 of Title 28, Judiciary and Judicial Procedure.

§848. Art. 48. Contempts

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $100, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
848	50:623.	May 5, 1950, ch. 169, § 1 (Art. 48), 64 Stat. 123.

The word ''may'' is substituted for the word ''shall''.

§ 849. Art. 49. Depositions

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Oct. 24, 1968, Pub. L. 90–632, § 2(20), 82 Stat. 1340; Dec. 6, 1983, Pub. L. 98–209, § 6(b), 97 Stat. 1400.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
849(a)	50:624(a).	May 5, 1950, ch. 169, § 1 (Art. 49), 64 Stat. 123.
849(b)	50:624(b).	
849(c)	50:624(c).	
849(d)	50:624(d).	
849(e)	50:624(e).	
849(f)	50:624(f).	

In subsection (a), the word ''commissioned'' is inserted for clarity.

In subsection (d), the word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico. The words ''of Columbia'' are inserted after the word ''District'' for clarity. The words ''the distance of'' are omitted as surplusage.

In subsections (e) and (f), the words ''the requirements of'' and the words ''of this article'' are omitted as surplusage. The word ''presented'' is substituted for the word ''adduced'' in subsection (e).

In subsection (f), the word ''directs'' is substituted for the words ''shall have directed''. The words ''by law'' are omitted as surplusage.

AMENDMENTS

1983—Subsecs. (d), (f). Pub. L. 98–209 inserted ''or, in the case of audiotape, videotape, or similar material, may be played in evidence'' after ''read in evidence''.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Authority competent to convene court-martial, see sections 822 to 824 of this title.

Officers authorized to administer oaths, see section 936 of this title.

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
850(a)	50:625(a).	May 5, 1950, ch. 169, §1 (Art. 50), 64 Stat. 124.
850(b)	50:625(b).	
850(c)	50:625(c).	

In subsections (a) and (b), the word ''commissioned'' is inserted for clarity.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

Judge Advocate Generals of Army, Navy, and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 5148, 8037 of this title.

§850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99–661, div. A, title VIII, §802(a)(1), Nov. 14, 1986, 100 Stat. 3905.)

EFFECTIVE DATE

Section 802(b) of Pub. L. 99–661 provided that: ''Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

§851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Oct. 24, 1968, Pub. L. 90–632, §2(21), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
851(a)	50:626(a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851(b)	50:626(b).	
851(c)	50:626(c).	

In subsection (a), the words ''in each case'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be'' in the second sentence. The word ''constitutes'' is substituted for the words ''shall constitute''. The word ''However,'' is substituted for the word ''but''. The word ''his'' is substituted for the words ''any such''. The words ''the ruling is'' are substituted for the words ''such ruling be''. The words ''voice vote'' are substituted for the words ''vote * * * viva voce''.

In subsection (c), the word ''must'' is substituted for the word ''shall'' in clause (2), since a condition is prescribed, not a command. The words ''United States'' are substituted for the word ''Government''.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90–632, § 2(21)(B), substituted ''military judge'' for ''law officer'' and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90–632, § 2(21)(C), substituted ''military judge'' for ''law officer'' and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90–632, § 2(21)(D), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Military judge prohibited from voting, see section 826 of this title.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Oct. 24, 1968, Pub. L. 90–632, § 2(22), 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
852(a)	50:627(a).	May 5, 1950, ch. 169, § 1 (Art. 52), 64 Stat. 125.
852(b)	50:627(b)	
852(c)	50:627(c).	

In subsections (a) and (b), the word ''may'' is substituted for the word ''shall''.

In subsection (b)(2), the words ''for more than'' are substituted for the words ''in excess of''.

In subsection (c), the word ''disqualifies'' is substituted for the words ''shall disqualify''. The word ''is'' is substituted for the words ''shall be'' in the last two sentences.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90–632, § 2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90–632, § 2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Objections to rulings, voice vote on, see section 851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 850a, 851 of this title.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
853	50:628.	May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125.

The word ''A'' is substituted for the word ''Every''.

§ 854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case

brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, Pub. L. 90–632, §2(23), 82 Stat. 1340; Dec. 6, 1983, Pub. L. 98–209, §6(c), 97 Stat. 1400.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
854(a)	50:629(a).	May 5, 1950, ch. 169, §1 (Art. 54), 64 Stat. 125.
854(b)	50:629(b).	
854(c)	50:629(c).	

In subsection (a), the word ''If'' is substituted for the words ''In case''. The words ''any of those'' are substituted for the word ''such'' in the last sentence.

In subsection (b), the words ''and the'' are substituted for the word ''which'' before the word ''record''. The words ''the matter and shall be authenticated in the manner required by such regulations as'' are substituted for the words ''such matter and be authenticated in such manner as may be required by regulations which''.

In subsection (c), the words ''it is'' are inserted before the word ''authenticated''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, §6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98–209, §6(c)(2), substituted ''the record'' for ''the record shall contain the matter and''.

Subsecs. (c), (d). Pub. L. 98–209, §6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a). Pub. L. 90–632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Courts of inquiry, see section 935 of this title.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Maximum limits.
857.	57.	Effective date of sentences.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade upon approval.

AMENDMENTS

1960—Pub. L. 86–633, §1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
855	50:636.	May 5, 1950, ch. 169, §1 (Art. 55), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Constitutional limitation, see Const. Amend. 8.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title,

§856. Art. 56. Maximum limits

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
856	50:637.	May 5, 1950, ch. 169, § 1 (Art. 56), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

§ 857. Art. 57. Effective date of sentences

(a) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(e)(1) In any case in which a court-martial sentences a person referred to in paragraph (2) to confinement, the convening authority may postpone the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(2) Paragraph (1) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Oct. 24, 1968, Pub. L. 90–632, § 2(24), 82 Stat. 1341; Dec. 6, 1983, Pub. L. 98–209, § 5(f), 97 Stat. 1400; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1064, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
857(a)	50:638(a).	May 5, 1950, ch. 169, § 1 (Art. 57), 64 Stat. 126.
857(b)	50:638(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
857(c)	50:638(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''begins'' is substituted for the words ''shall begin''.

In subsection (c), the word ''are'' is substituted for the words ''shall become''.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–484 added subsec. (e).

1983—Subsec. (a). Pub. L. 98–209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90–632 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Delivery of offenders to civil authorities, see section 814 of this title.

Enlisted members' deposits not subject to forfeiture by sentence of court-martial, see section 1035 of this title.

Enlisted members required to make up lost time, see section 972 of this title.

Punishment prohibited before trial, see section 813 of this title.

§ 858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal

or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated.

(b) The omission of the words ''hard labor'' from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
858(a)	50:639(a).	May 5, 1950, ch. 169, §1 (Art. 58), 64 Stat. 126.
858(b)	50:639(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Department concerned'', since the ''Department'' as an entity, cannot issue instructions. The word ''are'' is substituted for the words ''shall be''. The words ''of Columbia'' are inserted after ''District'' for clarity.

In subsection (b), the word ''from'' is substituted for the word ''in''. The words ''does not deprive'' are substituted for the words ''shall not be construed as depriving''.

CROSS REFERENCES

Enlisted members required to make up lost time, see section 972 of this title.

Gratuity payment to persons released from confinement or discharged for fraudulent enlistment, see sections 956 and 1048 of this title.

Penitentiary imprisonment, consent, see section 4083 of Title 18, Crimes and Criminal Procedure.

Prisons and prisoners, see section 4001 et seq. of Title 18.

§858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E–1, as approved by the convening authority, that includes—

(1) a dishonorable or bad-conduct discharge;

(2) confinement; or

(3) hard labor without confinement;

reduces that member to pay grade E–1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86–633, §1(1), July 12, 1960, 74 Stat. 468.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 707 of this title.

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.	
859.	59.	Error of law; lesser included offense.
860.	60.	Action by the convening authority.
861.	61.	Waiver or withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Review by a judge advocate.
865.	65.	Disposition of records.
866.	66.	Review by Court of Criminal Appeals.
867.	67.	Review by the Court of Appeals for the Armed Forces.
867a.	67a.	Review by the Supreme Court.
868.	68.	Branch offices.
869.	69.	Review in the office of the Judge Advocate General.
870.	70.	Appellate counsel.
871.	71.	Execution of sentence; suspension of sentence.
872.	72.	Vacation of suspension.
873.	73.	Petition for a new trial.
874.	74.	Remission and suspension.
875.	75.	Restoration.
876.	76.	Finality of proceedings, findings, and sentences.
876a.	76a.	Leave required to be taken pending review of certain court-martial convictions.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(4)(C), Oct. 5, 1994, 108 Stat. 2832, substituted ''Court of Criminal Appeals'' for Court of Military Review'' in item 866 and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item 867.

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(1), Nov. 5, 1990, 104 Stat. 1718, added item 867a.

1983—Pub. L. 98–209, §§5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400–1402, substituted ''Post-trial Procedure and Review of Courts-Martial'' for ''Review of Courts-Martial'' as subchapter heading, ''Action by the convening authority'' for ''Initial action on the record'' in item 860, ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' in item 861, ''Appeal by the United States'' for ''Reconsideration and revision'' in item 862, ''Review by a judge advocate'' for ''Approval by the convening authority'' in item 864, and ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in item 865.

1981—Pub. L. 97–81, §2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 876a.

1968—Pub. L. 90–632, §2(25), Oct. 24, 1968, 82 Stat. 1341, substituted ''Court of Military Review'' for ''board of review'' in item 866 (article 66).

§859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
859(a)	50:646(a).	May 5, 1950, ch. 169, §1 (Art. 59), 64 Stat. 127.
859(b)	50:646(b).	

The word ''may'' is substituted for the word ''shall''.

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Dec. 6, 1983, Pub. L. 98–209, § 5(a)(1), 97 Stat. 1395; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, § 806(a)–(c), 100 Stat. 3908, 3909.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
860	50:647.	May 5, 1950, ch. 169, § 1 (Art. 60), 64 Stat. 127.

The word ''a'' is substituted for the word ''every''. The word ''by'' before the words ''any officer'' is omitted as surplusage. The word ''person'' is substituted for the word ''officer'' before the words ''who convened'', since, under sections 823 and 824 of this title (articles 23

and 24), noncommissioned officers who are ''officers in charge'' may convene special and summary courts-martial.

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–661, §806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

''(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

''(B) in the case of all other courts-martial, for not more than an additional 10 days.''

Subsec. (b)(2). Pub. L. 99–661, §806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–661, §806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after ''case'', and struck out former par. (3) which read as follows: ''In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.''

Subsec. (c)(2). Pub. L. 99–661, §806(b), struck out ''and, if applicable, under subsection (d),'' after ''under subsection (b)''.

Subsec. (d). Pub. L. 99–661, §806(c), substituted ''who may submit any matter in response under subsection (b)'' for ''who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days.''

1983—Pub. L. 98–209 amended section generally, substituting ''Action by the convening authority'' for ''Initial action on the record'' as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 806(c) [(d)] of title VIII of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

CROSS REFERENCES

Authority to convene general, special or summary courts-martial, see sections 822 to 824 of this title.

Record of trial, see section 854 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 838, 857, 861, 864, 869, 871, 876a, 1059, 1408 of this title; title 37 section 406.

§861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98–209, §5(b)(1), 97 Stat. 1397.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
861	50:648.	May 5, 1950, ch. 169, §1 (Art. 61), 64 Stat. 127.

The word ''each'' is substituted for the word ''every''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865, 866, 869, 871 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98–209, § 5(c)(1), 97 Stat. 1398; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, § 924(c)(2), 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
862(a)	50:649(a).	May 5, 1950, ch. 169, § 1 (Art. 62), 64 Stat. 127.
862(b)	50:649(b).	

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in two places.

1983—Pub. L. 98–209 amended section generally, substituting ''Appeal by the United States'' for ''Reconsideration and revision'' as section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98–209, § 5(d), 97 Stat. 1398; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1065, 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
863(a)	50:650(a).	May 5, 1950, ch. 169, § 1 (Art. 63), 64 Stat. 127.
863(b)	50:650(b).	

In subsection (a), the words ''In such a'' are substituted for the words ''in which''.

In subsection (b), the word ''Each'' is substituted for the word ''Every''. The word ''may'' is substituted for the word ''shall'' in the second sentence.

AMENDMENTS

1992—Pub. L. 102–484 substituted ''approved'' for ''imposed'' in second sentence and inserted ''approved'' before last reference to ''sentence'' in third sentence.

1983—Pub. L. 98–209 struck out subsec. (a) which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he disapproved the findings without reordering a rehearing, he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted ''under this chapter'' after ''Each rehearing'', and inserted provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Dec. 6, 1983, Pub. L. 98–209, §7(a)(1), 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
864	50:651.	May 5, 1950, ch. 169, §1 (Art. 64), 64 Stat. 128.

The word ''may'' is substituted for the word ''shall''. The word ''is'' is substituted for the words ''shall constitute''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Review by a judge advocate'' for ''Approval by the convening authority'' in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discretion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

CROSS REFERENCES

Disapproval by the convening authority, see section 863 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 871 of this title.

§865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Dec. 8, 1967, Pub. L. 90–179, §1(6), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90–632, §2(26), 82 Stat. 1341; Dec. 12, 1980, Pub. L. 96–513, title V, §511(25), 94 Stat. 2922; Dec. 6, 1983, Pub. L. 98–209, §6(d)(1), 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
865(a)	50:652(a).	May 5, 1950, ch. 169, § 1 (Art. 65), 64 Stat. 128.
865(b)	50:652(b).	
865(c)	50:652(c).	

In subsection (b), the word ''If'' is substituted for the word ''Where''.

In subsections (a) and (b), the words ''send'' and ''sent'' are substituted for the words ''forward'' and ''forwarded'', respectively.

In subsection (c), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1968—Subsec. (b). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 866. Art. 66. Review by Court of Criminal Appeals

(a) Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Criminal Appeals the record in each case of trial by court-martial—

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

(c) In a case referred to it, the Court of Criminal Appeals may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Criminal Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Military Review[1] and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the

[1] So in original. Probably should be ''Courts of Criminal Appeals''.

Judge Advocates General and by Courts of Military Review.[1]

(g) No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(h) No member of a Court of Criminal Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Oct. 24, 1968, Pub. L. 90–632, §2(27), 82 Stat. 1341; Dec. 6, 1983, Pub. L. 98–209, §§7(b), (c), 10(c)(1), 97 Stat. 1402, 1406; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, §924(b)(2), (c)(1), (4)(A), 108 Stat. 2831, 2832.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
866(a)	50:653(a).	May 5, 1950, ch. 169, §1 (Art. 66), 64 Stat. 128.
866(b)	50:653(b).	
866(c)	50:653(c).	
866(d)	50:653(d).	
866(e)	50:653(e).	
866(f)	50:653(f).	

In subsection (a), the word ''Each'' is substituted for the words ''The * * * of each of the armed forces''. The word ''must'' is substituted for the word ''shall'' after the word ''whom'', since a condition is prescribed, not a command. The words ''of the United States'' are omitted as surplusage.

In subsections (a) and (b), the word ''commissioned'' is inserted before the word ''officer''.

In subsection (c), the word ''may'' is substituted for the word ''shall'' and for the words ''shall have authority to''.

In subsection (e), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the words ''of the armed forces'' and ''proceedings in and before'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337, §924(c)(4)(A), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in section catchline.

Pub. L. 103–337, §924(b)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

Pub. L. 103–337, §924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in subsec. (e).

1983—Subsec. (a). Pub. L. 98–209, §7(b), inserted provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98–209, §7(c), amended subsec. (b) generally, designating existing provisions as par. (1), struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98–209, §10(c)(1), substituted ''the Court of Military Appeals, or the Supreme Court'' for ''or the Court of Military Appeals''.

1968—Subsec. (a). Pub. L. 90–632, §2(27)(A), (B), substituted ''Court of Military Review'' for ''board of review'' in section catchline and, in subsec. (a), substituted ''Court of Military Review'' for ''board of review'' as name of reviewing body established by each Judge Advocate General, and inserted provisions setting out procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b) to (e). Pub. L. 90–632, §2(27)(C), substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

Subsec. (f). Pub. L. 90–632, §2(27)(D), substituted ''Courts of Military Review'' for ''boards of review'' in two places.

Subsecs. (g), (h). Pub. L. 90–632, §2(27)(E), added subsecs. (g) and (h).

CHANGE OF NAME

Section 924(b)(1) of Pub. L. 103–337 provided that: ''Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Section 3(b) of Pub. L. 90–632 provided that: ''Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review [now Court of Criminal Appeals].''

CROSS REFERENCES

Review in the office of the Judge Advocate General, see section 869 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 861, 862, 864, 865, 869 of this title.

§867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a deci-

sion of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Criminal Appeals. In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Aug. 14, 1964, Pub. L. 88–426, title IV, § 403(j), 78 Stat. 434; June 15, 1968, Pub. L. 90–340, § 1, 82 Stat. 178; Oct. 24, 1968, Pub. L. 90–632, § 2(28), 82 Stat. 1342; Dec. 23, 1980, Pub. L. 96–579, § 12(a), 94 Stat. 3369; Nov. 20, 1981, Pub. L. 97–81, § 5, 95 Stat. 1088; Oct. 12, 1982, Pub. L. 97–295, § 1(12), 96 Stat. 1289; Dec. 6, 1983, Pub. L. 98–209, §§ 7(d), 9(a), 10(c)(2), 13(d), 97 Stat. 1402, 1404, 1406, 1408; Apr. 21, 1987, Pub. L. 100–26, § 7(a)(2), 101 Stat. 275; Sept. 29, 1988, Pub. L. 100–456, div. A, title VII, § 722(a), (c), 102 Stat. 2002, 2003; Nov. 29, 1989, Pub. L. 101–189, div. A, title XIII, § 1301(a), 103 Stat. 1569; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), (4)(B), 108 Stat. 2831, 2832.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
867(a)	50:654(a).	May 5, 1950, ch. 169, § 1 (Art. 67), 64 Stat. 129; Mar. 2, 1955, ch. 9, § 1(i), 69 Stat. 10.
867(b)	50:654(b).	
867(c)	50:654(c).	
867(d)	50:654(d).	
867(e)	50:654(e).	
867(f)	50:654(f).	
867(g)	50:654(g).	

In subsection (a)(1), the word ''is'' is substituted for the words ''is hereby established''. The words ''all'' and ''which shall be'' are omitted as surplusage. The word ''consists'' is substituted for the words ''shall consist''. The word ''civil'' is substituted for the word ''civilian''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''. The word ''is'' is substituted for the word ''shall'' before the words ''any person''. The words ''is entitled to'' are substituted for the words ''shall receive''. The word ''is'' is substituted for the words ''shall be'' in the fourth sentence. The word ''may'' is substituted for the words ''shall have power to * * * to''. The word ''does'' is substituted for the word ''shall'' in the next to the last sentence. In the last sentence, the words ''is entitled * * * to'' are substituted for the word ''shall''. The word ''outside'' is substituted for the words ''at a place other than his official station. The official station of such judges for such purpose shall be''. The words ''also'' and ''actually'' are omitted as surplusage.

In subsection (a)(2), the words ''February 28, 1951,'' are substituted for the words ''the effective date of this subdivision''. The word ''shall'' in the first sentence, and the word ''shall'' before the word ''expire'' in the second sentence, are omitted as surplusage. The word ''before'' is substituted for the words ''prior to''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''.

In subsection (a)(3), the word ''for'' is substituted for the words ''upon the ground of''.

In subsection (b), the words ''the following cases'' are omitted as surplusage.

In subsections (b) and (d), the word ''sent'' is substituted for the word ''forwarded''.

In subsection (c), the word ''when'' is inserted after the word ''time''. The words ''a grant of'' are omitted as surplusage.

In subsection (d), the word ''may'' is substituted for the word ''shall'' in the first sentence.

In subsection (f), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (g), the words ''of the armed forces'' are omitted as surplusage. The words ''policies as to sentences'' are substituted for the words ''sentence policies''. The word ''considered'' is substituted for the word ''deemed''. The words ''Secretaries of the military departments, and the Secretary of the Treasury'' are substituted for the words ''Secretaries of the Departments''.

1982 ACT

In subsection (d), the words ''Court of Military Review'' are substituted for ''board of review'' because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90–632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

AMENDMENTS

1994—Pub. L. 103–337, § 924(c)(4)(B), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in section catchline.

Pub. L. 103–337, § 924(c)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing in subsecs. (a) to (c) and (e).

Pub. L. 103–337, § 924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1989—Pub. L. 101–189 redesignated subsecs. (b) to (f) as (a) to (e), respectively, struck out former subsec. (a) which related to establishment of the United States Court of Military Appeals, and appointment, removal, allowances and compensation, etc., of judges of such court, struck out subsec. (g) which related to a committee required to make annual comprehensive surveys of the operation of this chapter, struck out subsec. (h) which related to review of decisions of the Court of Military Appeals by the Supreme Court, and struck out subsec. (i) which related to annuities for judges and former or retired judges, and survivors and former spouses of judges and former judges.

1988—Subsec. (a)(4). Pub. L. 100–456, §722(c), inserted ''or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5'' after ''retired pay'' in two places.

Subsec. (i). Pub. L. 100–456, §722(a), added subsec. (i).

1987—Subsec. (g)(1). Pub. L. 100–26 substituted ''the Staff Judge Advocate to the Commandant of the Marine Corps'' for ''the Director, Judge Advocate Division, Headquarters, United States Marine Corps''.

1983—Subsec. (a)(3). Pub. L. 98–209, §13(d), inserted ''Circuit'' after ''District of Columbia''.

Subsec. (b)(1). Pub. L. 98–209, §7(d), struck out ''affects a general or flag officer or'' before ''extends to death''.

Subsec. (g). Pub. L. 98–209, §9(a), designated existing provisions as par. (1), substituted ''A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report'' for ''The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report'', and added pars. (2) and (3).

Subsec. (h). Pub. L. 98–209, §10(c)(2), added subsec. (h).

1982—Subsec. (d). Pub. L. 97–295, §1(12)(A), substituted ''Court of Military Review'' for ''board of review'' after ''incorrect in law by the''.

Subsec. (g). Pub. L. 97–295, §1(12)(B), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' after ''military departments, and the''.

1981—Subsec. (c). Pub. L. 97–81 substituted provisions authorizing the accused to petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980—Subsec. (a)(1). Pub. L. 96–579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968—Subsec. (a)(1). Pub. L. 90–340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Article I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of $33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed $15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90–340 redesignated former par. (3) as (2) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90–340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90–340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88–426 increased salary of judges from $25,500 to $33,000.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 722(d) of Pub. L. 100–456 provided that: ''Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98–209 effective Dec. 6, 1983, and amendment by sections 7(d) and 10(c)(2) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after that date, see section 7(a), (b)(5) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

DEADLINE FOR ESTABLISHMENT OF SURVIVOR PROGRAM

Section 722(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense shall establish the program required by paragraph (4) of section 867(i) of title 10, United States Code, as added by subsection (a), not later than one year after the date of the enactment of this Act [Sept. 29, 1988].''

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Section 9(b) of Pub. L. 98–209, as amended by Pub. L. 98–525, title XV, § 1521, Oct. 19, 1984, 98 Stat. 2628, directed Secretary of Defense to establish a commission to study the sentencing authority, jurisdiction, tenure, and retirement system of military judges, and to report, not later than Dec. 15, 1984, its findings and recommendations to committees of Congress and to the committee established under former section 867(g) of this title.

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Section 12(b) of Pub. L. 96–579 provided that the term of office of a judge of United States Court of Military Appeals serving on such court on Dec. 23, 1980, expire (1) on the date the term of such judge would have expired under the law in effect on the day before Dec. 23, 1980, or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Section 2 of Pub. L. 90–340 provided that: ''The United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act.''

SALARY INCREASES

1987—Salaries of judges increased to $95,000 per annum, on recommendation of President, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to $57,500 per annum, on recommendation of President, see note set out under section 358 of Title 2.

1969—Salaries of judges increased from $33,000 to $42,500 per annum, commencing first day of pay period which begins after Feb. 14, 1969, on recommendation of President, see note set out under section 358 of Title 2.

EXECUTIVE ORDER NO. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES; RULES OF PRACTICE AND PROCEDURE

See Appendix to this title.

CROSS REFERENCES

Execution of sentence, see section 871 of this title.
New trial, petition for, see section 873 of this title.
Review in office of Judge Advocate General, see section 869 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 869 of this title; title 28 section 1259.

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(b), Nov. 29, 1989, 103 Stat. 1569; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in two places.

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, Pub. L. 90–632, § 2(29), 82 Stat. 1342; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, § 924(c)(2), 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
868	50:655.	May 5, 1950, ch. 169, § 1 (Art. 68), 64 Stat. 130.

The word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall be empowered to''. The word ''respective'' is inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1968—Pub. L. 90–632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted ''Court of Military Review'' for ''board of review'' as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Review by Court of Criminal Appeals, see section 866 of this title.

§869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(d) A Court of Criminal Appeals may review, under section 866 of this title (article 66)—

(1) any court-martial case which (A) is subject to action by the Judge Advocate General under this section, and (B) is sent to the Court of Criminal Appeals by order of the Judge Advocate General; and

(2) any action taken by the Judge Advocate General under this section in such case.

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under this section, the Court may take action only with respect to matters of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Oct. 24, 1968, Pub. L. 90–632, §2(30), 82 Stat. 1342; Nov. 20, 1981, Pub. L. 97–81, §6, 95 Stat. 1089; Dec. 6, 1983, Pub. L. 98–209, §7(e)(1), 97 Stat. 1402; Nov. 29, 1989, Pub. L. 101–189, div. A, title XIII, §§1302(a), 1304(b)(1), 103 Stat. 1576, 1577; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, §924(c)(2), 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
869	50:656.	May 5, 1950, ch. 169, §1 (Art. 69), 64 Stat. 130.

The word ''may'' is substituted for the word ''will''. The word ''under'' is substituted for the words ''pursuant to the provisions of''.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1989—Subsec. (a). Pub. L. 101–189, §1304(b)(1), which directed amendment of subsec. (a) by striking ''section 867(b)(2) of this title (article 67(b)(2))'' in the third sentence and inserting in lieu thereof ''section 867(a)(2) of this title (article 67(a)(2))'', could not be executed because of the intervening amendment by Pub. L. 101–189, §1302(a)(1), which struck out the third sentence, see below.

Pub. L. 101–189, §1302(a)(1), struck out the third sentence, which read as follows: ''If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).''

Subsecs. (d), (e). Pub. L. 101–189, §1302(a)(2), added subsecs. (d) and (e).

1983—Pub. L. 98–209 amended section generally. Prior to amendment section provided that every record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General; that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

1981—Pub. L. 97–81 inserted provision that, when a case is considered upon application of the accused, the application must be filed in the Office of the Judge Ad-

vocate General by the accused before (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time.

1968—Pub. L. 90–632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1302(b) of Pub. L. 101–189 provided that: ''Subsection (e) of section 869 of title 10, United States Code, as added by subsection (a), shall apply with respect to cases in which a finding of guilty is adjudged by a general court-martial after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 effective at end of 60-day period beginning on Nov. 20, 1981, see section 7(a) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective Oct. 24, 1968, see section 4(b) of Pub. L. 90–632, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Section 7(e)(2) of Pub. L. 98–209 provided that: ''The two-year period specified under the second sentence of section 869(b) (article 69(b)) of title 10, United States Code, as amended by paragraph (1), does not apply to any application filed in the office of the appropriate Judge Advocate General (as defined in section 801(1) of such title) on or before October 1, 1983. The application in such a case shall be considered in the same manner and with the same effect as if such two-year period had not been enacted.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 864, 865 of this title.

§ 870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, Pub. L. 90–632, § 2(31), 82 Stat. 1342; Dec. 6, 1983, Pub. L. 98–209, § 10(c)(3), 97 Stat. 1406; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
870(a)	50:657(a).	May 5, 1950, ch. 169, § 1 (Art. 70), 64 Stat. 130.
870(b)	50:657(b).	
870(c)	50:657(c).	
870(d)	50:657(d).	
870(e)	50:657(e).	

In subsection (a), the word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The word ''commissioned'' is inserted for clarity. The word ''are'' is substituted for the words ''shall be''. The words ''the provisions of'' are omitted as surplusage.

In subsections (b) and (c), the word ''shall'' is substituted for the words ''It shall be the duty of * * * to''.

In subsection (c)(3), the word ''sent'' is substituted for the word ''transmitted''.

In subsection (d), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the word ''directs'' is substituted for the words ''shall direct''.

AMENDMENTS

1994—Subsecs. (b) to (d). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (b). Pub. L. 98–209, § 10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98–209, § 10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see

section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Trial counsel and defense counsel, duties, see section 838 of this title.

§871. Art. 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.

(b) If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Criminal Appeals and—

(A) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(B) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(ii) such a petition is rejected by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part thereof, except a death sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Oct. 24, 1968, Pub. L. 90–632, §2(32), 82 Stat. 1342; Dec. 6, 1983, Pub. L. 98–209, §5(e), 97 Stat. 1399; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
871(a)	50:658(a).	May 5, 1950, ch. 169, §1 (Art. 71), 64 Stat. 131.
871(b)	50:658(b).	
871(c)	50:658(c).	
871(d)	50:658(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''may'' is substituted for the word ''shall'' in the first sentence. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words ''who is'' are omitted as surplusage.

In subsection (c), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (a). Pub. L. 98–209, §5(e)(1), amended subsec. (a) generally, substituting provision that part of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98–209, §5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman, the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a general or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98–209, § 5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: ''No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.''

Subsec. (d). Pub. L. 98–209, § 5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: ''All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.''

1968—Subsec. (c). Pub. L. 90–632, § 2(32)(A), substituted ''Court of Military Review'' for ''board of review''.

Subsec. (d). Pub. L. 90–632, § 2(32)(B), inserted reference to deferred court-martial sentences.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendments by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Pay and allowances of enlisted members of Army and Air Force not to accrue during suspended sentence of dishonorable discharge, see section 804 of Title 37, Pay and Allowances of the Uniformed Services.

Vacation of suspension, see section 872 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 872 of this title.

§ 872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
872(a)	50:659(a).	May 5, 1950, ch. 169, § 1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	
872(c)	50:659(c).	

In subsection (a), the word ''Before'' is substituted for the words ''Prior to''.

In subsection (b), the words ''be effective * * * to'' are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word ''is'' is substituted for the words ''shall * * * be'' in the last sentence. The word ''sent'' is substituted for the word ''forwarded''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

§ 873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Oct. 24, 1968, Pub. L. 90–632, § 2(33), 82 Stat. 1342; Oct. 5, 1994, Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
873	50:660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words ''the ground'' are substituted for the word ''grounds''. The words ''as the case may be'' are substituted for the word ''respectively'', since the prescribed action is alternative, not distributive.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1968—Pub. L. 90–632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90–632, set out as a note under section 801 of this title.

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

Review by—

Court of Appeals for the Armed Forces, see section 867 of this title.

Court of Criminal Appeals, see section 866 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
874(a)	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

CROSS REFERENCES

Finality of proceedings, findings, and sentences as subject to petition for new trial, see section 876 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
875(a)	50:662(a).	May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word ''If'' is substituted for the word ''Where''. The word ''imposed'' is substituted for the word ''sustained''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''issue'' is substituted for the word ''issuance''. The word ''commissioned'' is inserted for clarity. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position''. The word ''receive'' is omitted as surplusage.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
876	50:663.	May 5, 1950, ch. 169, § 1 (Art. 76), 64 Stat. 132.

The word ''under'' is substituted for the words ''pursuant to''. The word ''are'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97–81, § 2(c)(1), Nov. 20, 1981, 95 Stat. 1087, and amended Pub. L. 98–209, § 5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983—Pub. L. 98–209 substituted ''under section 860 of this title (article 60)'' for ''under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction'' and ''by the officer exercising general court-martial jurisdiction'', respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 707 of this title.

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.	
877.	77.	Principals.
878.	78.	Accessory after the fact.
879.	79.	Conviction of lesser included offense.
880.	80.	Attempts.
881.	81.	Conspiracy.
882.	82.	Solicitation.
883.	83.	Fraudulent enlistment, appointment, or separation.
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885.	85.	Desertion.
886.	86.	Absence without leave.
887.	87.	Missing movement.
888.	88.	Contempt toward officials.
889.	89.	Disrespect toward superior commissioned officer.
890.	90.	Assaulting or willfully disobeying superior commissioned officer.
891.	91.	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
892.	92.	Failure to obey order or regulation.
893.	93.	Cruelty and maltreatment.
894.	94.	Mutiny or sedition.
895.	95.	Resistance, breach of arrest, and escape.
896.	96.	Releasing prisoner without proper authority.
897.	97.	Unlawful detention.
898.	98.	Noncompliance with procedural rules.
899.	99.	Misbehavior before the enemy.
900.	100.	Subordinate compelling surrender.
901.	101.	Improper use of countersign.
902.	102.	Forcing a safeguard.
903.	103.	Captured or abandoned property.
904.	104.	Aiding the enemy.
905.	105.	Misconduct as prisoner.
906.	106.	Spies.
906a.	106a.	Espionage.
907.	107.	False official statements.
908.	108.	Military property of United States—Loss, damage, destruction, or wrongful disposition.
909.	109.	Property other than military property of United States—Waste, spoilage, or destruction.
910.	110.	Improper hazarding of vessel.
911.	111.	Drunken or reckless operation of a vehicle, aircraft, or vessel.
912.	112.	Drunk on duty.
912a.	112a.	Wrongful use, possession, etc., of controlled substances.
913.	113.	Misbehavior of sentinel.
914.	114.	Dueling.
915.	115.	Malingering.
916.	116.	Riot or breach of peace.
917.	117.	Provoking speeches or gestures.
918.	118.	Murder.
919.	119.	Manslaughter.
920.	120.	Rape and carnal knowledge.
921.	121.	Larceny and wrongful appropriation.
922.	122.	Robbery.
923.	123.	Forgery.
923a.	123a.	Making, drawing, or uttering check, draft, or order without sufficient funds.
924.	124.	Maiming.
925.	125.	Sodomy.
926.	126.	Arson.
927.	127.	Extortion.
928.	128.	Assault.
929.	129.	Burglary.
930.	130.	Housebreaking.
931.	131.	Perjury.
932.	132.	Frauds against the United States.
933.	133.	Conduct unbecoming an officer and a gentleman.
934.	134.	General article.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, § 1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving''.

1985—Pub. L. 99–145, title V, § 534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98–209, § 8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87–385, § 1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

CROSS REFERENCES

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

§ 877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
877	50:671.	May 5, 1950, ch. 169, § 1 (Art. 77), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Definition of principal, Federal offense, see section 2 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
878	50:672.	May 5, 1950, ch. 169, § 1 (Art. 78), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937, of this title.

Definition of accessory after the fact, Federal offense, see section 3 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
879	50:673.	May 5, 1950, ch. 169, § 1 (Art. 79), 64 Stat. 134.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
880(a)	50:674(a).	May 5, 1950, ch. 169, § 1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words ''even though'' are substituted for the word ''but'' for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Desertion, attempt, see section 885 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 881. Art. 81. Conspiracy

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct,

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
881	50:675.	May 5, 1950, ch. 169, § 1 (Art. 81), 64 Stat. 134.

The words ''or persons'' are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses, see sections 371, 372 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
882(a)	50:676(a).	May 5, 1950, ch. 169, § 1, (Art. 82), 64 Stat. 134.
882(b)	50:676(b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enticing desertion, Federal offense, see section 1381 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
883	50:677.	May 5, 1950, ch. 169, § 1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words ''means of'' are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
884	50:678.	May 5, 1950, ch. 169, § 1 (Art. 84), 64 Stat. 135.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
885(a)	50:679(a).	May 5, 1950, ch. 169, § 1 (Art. 85), 64 Stat. 135.
885(b)	50:679(b).	
885(c)	50:679(c).	

In subsection (a), the word ''unit'' is substituted for the words ''place of service'' to conform to clause (2) of this section and section 886(3) of this title. The word ''proper'' is omitted as surplusage.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''before'' is substituted for the words ''prior to''. The words ''its acceptance'' are substituted for the words ''the acceptance of the same''. The words ''after tender of'' are substituted for the words ''having tendered'' for clarity. The word ''due'' is omitted as surplusage.

In subsection (c), the words ''attempt to desert'' are substituted for the words ''attempted desertion''.

CROSS REFERENCES

Apprehension of deserters, see section 808 of this title.

Article to be explained, see section 937 of this title.

Enlisted members of Army and Air Force, required to make up lost time, see section 972 of this title.

Enticing desertion and harboring deserters, Federal offense, see section 1381 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Naturalization, deserter ineligible for, see section 1425 of Title 8, Aliens and Nationality.

Plea of guilty, prohibition against reception, see section 845 of this title.

Public office, deserter ineligible to hold, see section 1425 of Title 8, Aliens and Nationality.

Solicitation of offense, see section 882 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
886	50:680.	May 5, 1950, ch. 169, § 1 (Art. 86), 64 Stat. 135.

The words ''proper'' and ''other'' are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Enlisted members required to make up time lost, see section 972 of this title.

Policy as to leave and liberty, Navy and Marine Corps, see section 5949 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a courtmartial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
887	50:681.	May 5, 1950, ch. 169, § 1 (Art. 87), 64 Stat. 135.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(25), 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
888	50:682.	May 5, 1950, ch. 169, § 1 (Art. 88), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity. The words ''the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession'' are substituted for the words ''Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States''.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
889	50:683.	May 5, 1950, ch. 169, § 1 (Art. 89), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
890	50:684.	May 5, 1950, ch. 169, § 1 (Art. 90), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Assault as Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.

Plea of guilty, prohibition against reception, see section 845 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
891	50:685.	May 5, 1950, ch. 169, § 1 (Art. 91), 64 Stat. 136.

The word ''member'' is substituted for the word ''person''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
892	50:686.	May 5, 1950, ch. 169, § 1 (Art. 92), 64 Stat. 136.

The word ''order'' is substituted for the word ''same''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 937, 2783 of this title.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
893	50:687.	May 5, 1950, ch. 169, § 1 (Art. 93), 64 Stat. 136.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Prisoner, misconduct as, see section 905 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
894(a)	50:688(a).	May 5, 1950, ch. 169, § 1 (Art. 94), 64 Stat. 136.
894(b)	50:688(b).	

In subsection (a)(1) and (2), the words ''or persons'' are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word ''a'' is substituted for the words ''an offense of''. The words ''commissioned officer'' are inserted after the word ''superior'', for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses—

Advocating overthrow of Government, see section 2385 of Title 18, Crimes and Criminal Procedure.

Mutiny affecting armed forces generally and during war, see sections 2387 and 2388 of Title 18.

Mutiny of seamen, see sections 2192, 2193 of Title 18.

Seditious conspiracy, see section 2384 of Title 18.

Forfeiture of veterans' benefits upon conviction under this section, see section 6105 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 of this title.

Solicitation of offense, see section 882 of this title.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title; title 38 section 6105.

§ 895. Art. 95. Resistance, breach of arrest, and escape

Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
895	50:689.	May 5, 1950, ch. 169, § 1 (Art. 95), 64 Stat. 136.

CROSS REFERENCES

Apprehension, see sections 807 and 808 of this title.
Article to be explained, see section 937 of this title.
Escape and rescue, Federal offenses, see section 751 et seq. of Title 18, Crimes and Criminal Procedure.
Restraint—
Imposition, see section 809 of this title.
Persons charged with offenses, see section 810 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
896	50:690.	May 5, 1950, ch. 169, § 1 (Art. 96), 64 Stat. 136.

The words ''whether or not the prisoner was committed in strict compliance with law'' are substituted for the word ''duly'', to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
897	50:691.	May 5, 1950, ch. 169, § 1 (Art. 97), 64 Stat. 137.

CROSS REFERENCES

Apprehension, see sections 807 and 808 of this title.
Article to be explained, see section 937 of this title.
Restraint—
Imposition, see section 809 of this title.
Persons charged with offenses, see section 810 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 898. Art. 98. Noncompliance with procedural rules

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
898	50:692.	May 5, 1950, ch. 169, § 1 (Art. 98), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
899	50:693.	May 5, 1950, ch. 169, § 1 (Art. 99), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Plea of guilty, prohibition against reception, see section 845 of this title.

Solicitation of offense, see section 882 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
900	50:694.	May 5, 1950, ch. 169, § 1 (Art. 100), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
901	50:695.	May 5, 1950, ch. 169, § 1 (Art. 101), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
902	50:696.	May 5, 1950, ch. 169, § 1 (Art. 102), 64 Stat. 137.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
903(a)	50:697(a).	May 5, 1950, ch. 169, § 1 (Art. 103), 64 Stat. 138.
903(b)	50:697(b).	

In subsection (b)(1), the words ''of this section'' are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 904. Art. 104. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

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

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
904	50:698.	May 5, 1950, ch. 169, §1 (Art. 104), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses—

Enlistment to serve against United States, see section 2390 of Title 18, Crimes and Criminal Procedure.

Recruiting for service against United States, see section 2389 of Title 18.

Trading with the Enemy Act, see section 16 of Appendix to Title 50, War and National Defense.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 6105 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 6105.

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
905	50:699.	May 5, 1950, ch. 169, §1 (Art. 105), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Cruelty and maltreatment, see section 893 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
906	50:700.	May 5, 1950, ch. 169, §1 (Art. 106), 64 Stat. 138.

The words ''of the United States'' are omitted as surplusage.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F.R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

CROSS REFERENCES

Aliens likely to engage in espionage, exclusion, apprehension and deportation, see sections 1182, 1225, 1251 and 1327 of Title 8, Aliens and Nationality.

Article to be explained, see section 937 of this title.

Communist-action organization, members of, see section 843 of Title 50, War and National Defense.

Espionage and censorship, see section 792 et seq. of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Forfeiture of veterans' benefits upon conviction under this section, see section 6105 of Title 38, Veterans' Benefits.

Plea of guilty, prohibition against reception, see section 845 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 6105.

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall

be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99–145, title V, § 534(a), Nov. 8, 1985, 99 Stat. 634.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8312.

§ 907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
907	50:701.	May 5, 1950, ch. 169, § 1 (Art. 107), 64 Stat. 138.

The word ''it'' is substituted for the words ''the same''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Fraud and false statements, Federal offenses, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 908. Art. 108. Military property of United States— Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
908	50:702.	May 5, 1950, ch. 169, § 1 (Art. 108), 64 Stat. 138.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses—

Government property, malicious mischief, see section 1361 of Title 18, Crimes and Criminal Procedure.

Public money, property or records, embezzlement and theft, see section 641 of Title 18.

Purchase of veterans' or armed forces' facilities property, fraud and false statements, see section 1024 of Title 18.

Individual equipment, unauthorized disposition, see sections 4836, 9836 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise

willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
909	50:703.	May 5, 1950, ch. 169, § 1 (Art. 109), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
910(a)	50:704(a).	May 5, 1950, ch. 169, § 1 (Art. 110), 64 Stat. 139.
910(b)	50:704(b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel

Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis,

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Oct. 27, 1986, Pub. L. 99–570, title III, § 3055, 100 Stat. 3207–76; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1066(a)(1), 106 Stat. 2506; Nov. 30, 1993, Pub. L. 103–160, div. A, title V, § 576(a), 107 Stat. 1677.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
911	50:705.	May 5, 1950, ch. 169, § 1 (Art. 111), 64 Stat. 139.

AMENDMENTS

1993—Par. (2). Pub. L. 103–160 inserted ''or more'' after ''0.10 grams'' in two places.

1992—Pub. L. 102–484 substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct.''

1986—Pub. L. 99–570 inserted ''or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 576(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendment to section 911 of title 10, United States Code, made by section 1066(a)(1) of Public Law 102–484 on October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
912	50:706.	May 5, 1950, ch. 169, § 1 (Art. 112), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Drunkenness or neglect of duty by seamen on commercial vessel, Federal offense, see section 2196 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufacturers, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine,

phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98–209, § 8(a), Dec. 6, 1983, 97 Stat. 1403.)

EFFECTIVE DATE

Section effective first day of eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100–180, div. A, title XII, § 1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

''(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

''(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

''(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

''(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

''(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

''(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

''(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

''(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

''(f) REPORT.—Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 911 of this title.

§ 913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
913	50:707.	May 5, 1950, ch. 169, § 1 (Art. 113), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described hereunder, see section 8312 of Title 5, Government Organization and Employees.

Plea of guilty, prohibition against reception, see section 845 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
914	50:708.	May 5, 1950, ch. 169, § 1 (Art. 114), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

(1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
915	50:709.	May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
916	50:710.	May 5, 1950, ch. 169, §1 (Art. 116), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Crew rioting on board vessel of United States, Federal offense, see section 2192 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
917	50:711.	May 5, 1950, ch. 169, §1 (Art. 117), 64 Stat. 139.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, §1066(b), 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
918	50:712.	May 5, 1950, ch. 169, §1 (Art. 118), 64 Stat. 140.

The words ''of this section'' are omitted as surplusage.

AMENDMENTS

1992—Par. (3). Pub. L. 102–484 substituted ''another'' for ''others''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 1111 of Title 18, Crimes and Criminal Procedure.

Federal retirement benefits, forfeiture upon conviction of offense described under this section, see section 8312 of Title 5, Government Organization and Employees.

Killing while engaged in other crime as manslaughter, see section 919 of this title.

Plea of guilty, prohibition against reception, see section 845 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 919, 929, 937 of this title.

§919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
919(a)	50:713(a).	May 5, 1950, ch. 169, §1 (Art. 119), 64 Stat. 140.
919(b)	50:713(b).	

The word ''named'' is substituted for the word ''specified''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 1112 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§920. Art. 120. Rape and carnal knowledge

(a) Any person subject to this chapter who commits an act of sexual intercourse, by force

and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1066(c), 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
920(a)	50:714(a).	May 5, 1950, ch. 169, § 1 (Art. 120), 64 Stat. 140.
920(b)	50:714(b).	
920(c)	50:714(c).	

In subsection (c), the words ''either of'' are inserted for clarity.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 struck out ''with a female not his wife'' after ''intercourse'' and ''her'' after ''without''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.
Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 8312 of Title 5, Government Organization and Employees.
Plea of guilty, prohibition against reception, see section 845 of this title.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
921(a)	50:715(a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921(b)	50:715(b).	

In subsection (a), the words ''whatever'' and ''true'' are omitted as surplusage. The word ''it'' is substituted for the words ''the same'' in clauses (1) and (2).

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.
Embezzlement and theft, Federal offenses, see section 641 et seq. of Title 18, Crimes and Criminal Procedure.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
922	50:716.	May 5, 1950, ch. 169, § 1 (Art. 122), 64 Stat. 140.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.
Robbery and burglary, Federal offenses, see section 2111 et seq. of Title 18, Crimes and Criminal Procedure.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
923	50:717.	May 5, 1950, ch. 169, §1 (Art. 123), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offenses punishable under this section, see section 929 of this title.

Federal offenses, see section 471 et seq. of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word ''credit'' means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87–385, §1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–385 provided that: ''This Act [enacting this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October 1961].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
924	50:718.	May 5, 1950, ch. 169, §1 (Art. 124), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Federal offense, see section 114 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§925. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
925(a)	50:719(a).	May 5, 1950, ch. 169, §1 (Art. 125), 64 Stat. 141.
925(b)	50:719(b).	

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Burglary when intending to commit offense punishable under this section, see section 929 of this title.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
926(a)	50:720(a).	May 5, 1950, ch. 169, § 1
926(b)	50:720(b).	(Art. 126), 64 Stat. 141.

In subsection (b), the words ''of this section'' are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.
Federal offense, see section 81 of Title 18, Crimes and Criminal Procedure.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
927	50:721.	May 5, 1950, ch. 169, § 1 (Art. 127), 64 Stat. 141.

The words ''of any description'' are omitted as surplusage.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this article.
Federal offenses—
Extortion and threats, see section 871 et seq. of Title 18, Crimes and Criminal Procedure.
Interference with commerce by threats or violence see section 1951 of Title 18.
Statute of limitations, see section 84 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
928(a)	50:722(a).	May 5, 1950, ch. 169, § 1
928(b)	50:722(b).	(Art. 128), 64 Stat. 141.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Burglary when intending to commit offense punishable under this section, see section 929 of this title.
Federal offense, see section 111 et seq. of Title 18, Crimes and Criminal Procedure.
Statute of limitations, see section 843 of this title.
Superior commissioned officer, assaulting, see section 890 of this title.
Warrant officer, noncommissioned officer, or petty officer, assaulting, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918–928 of this title (articles 118–128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
929	50:723.	May 5, 1950, ch. 169, § 1 (Art. 129), 64 Stat. 142.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Robbery and burglary, Federal offenses, see section 2111 et seq. of Title 18, Crimes and Criminal Procedure.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
930	50:724.	May 5, 1950, ch. 169, § 1 (Art. 130), 64 Stat. 142.

CROSS REFERENCES

Article to be explained, see section 937 of this title.
Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Oct. 18, 1976, Pub. L. 94–550, §3, 90 Stat. 2535; Oct. 12, 1982, Pub. L. 97–295, §1(13), 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
931	50:725.	May 5, 1950, ch. 169, §1 (Art. 131), 64 Stat. 142.

The words ''in a'' are inserted before the words ''course of justice''.

AMENDMENTS

1982—Par. (2). Pub. L. 97–295 struck out ''United States Code,'' after ''title 28,''.

1976—Pub. L. 94–550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offense, see section 1621 of Title 18, Crimes and Criminal Procedure.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
932	50:726.	May 5, 1950, ch. 169, §1 (Art. 132), 64 Stat. 142.

The word ''it'' is substituted for the words ''the same'' throughout the revised section.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

Federal offenses—

Claims and services in matters affecting Government, see section 285 et seq. of Title 18, Crimes and Criminal Procedure.

Fraud and false statements, see section 1001 et seq. of Title 18.

Statute of limitations, see section 843 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
933	50:727.	May 5, 1950, ch. 169, §1 (Art. 133), 64 Stat. 142.

The word ''commissioned'' is inserted for clarity.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
934	50:728.	May 5, 1950, ch. 169, § 1 (Art. 134), 64 Stat. 142.

The words ''shall be'' are inserted before the word ''punished''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths and to act as notary.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
935(a)	50:731(a).	May 5, 1950, ch. 169, § 1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''consists'' is substituted for the words ''shall consist''.

In subsection (c), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1.

In subsection (g), the word ''may'' is substituted for the word ''shall''.

In subsection (h), the word ''If'' is substituted for the words ''In case''.

CROSS REFERENCES

Challenges, general or special court-martial, see section 841 of this title.

Counsel, right to before general or special court-martial, see section 838 of this title.

Evidence, courts-martial—

Depositions, see section 849 of this title.

Opportunity to obtain witnesses and other evidence, see section 846 of this title.

Refusal of witnesses to appear or testify, see section 847 of this title.

Judge Advocate Generals of the Army and Air Force to receive, revise, and have recorded proceedings of courts of inquiry, see sections 3037, 8072 of this title.

Military judge of general court-martial, see section 826 of this title.

Oaths, administration of; notary, general powers of, see section 936 of this title.

Oaths, general and special courts-martial, see section 842 of this title.

Persons authorized to convene general courts-martial, see section 822 of this title.

Records of courts of inquiry, admissibility, see section 850 of this title.

§ 936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; July 5, 1960, Pub. L. 86–589, 74 Stat. 329; Dec. 8, 1967, Pub. L. 90–179, §1(7), 81 Stat. 546; Oct. 24, 1968, Pub. L. 90–632, §2(34), 82 Stat. 1343; Dec. 6, 1983, Pub. L. 98–209, §2(f), 97 Stat. 1393; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, §804(c), 100 Stat. 3907; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1234(a)(1), 102 Stat. 2059; Nov. 5, 1990, Pub. L. 101–510, div. A, title V, §551(b), 104 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
936(a)	50:732(a).	May 5, 1950, ch. 169, §1 (Art. 136), 64 Stat. 143.
936(b)	50:732(b).	
936(c)	50:732(c).	
936(d)	50:732(d).	

In subsection (a), the word ''may'' is substituted for the words ''shall have authority to''. The word ''shall'' before the words ''have the general powers'' is omitted as surplusage. The words ''the continental limits'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words ''in the armed forces'' are omitted as surplusage.

In subsection (b), the word ''may'' is substituted for the words ''shall have authority to''.

In subsection (c), the words ''of any character'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

In subsection (d), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, §551(b)(1), struck out '', and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States'' after ''including military justice'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–510, §551(b)(2), struck out subsecs. (c) and (d) which read as follows:

''(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

''(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.''

1988—Subsec. (a). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''Puerto Rico,''.

1986—Subsecs. (a), (b). Pub. L. 99–661 inserted ''or performing inactive-duty training'' after ''active duty''.

1983—Subsec. (a)(1). Pub. L. 98–209, §2(f)(1), struck out ''of the Army, Navy, Air Force, and Marine Corps'' after ''All judge advocates''.

Subsec. (a)(2) to (7). Pub. L. 98–209, §2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' in par. (1).

1967—Subsec. (a)(1). Pub. L. 90–179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86–589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§937. Art. 137. Articles to be explained

(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within six days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Nov. 14, 1986, Pub. L. 99–661, div. A, title VIII, §804(d), 100 Stat. 3907.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
937	50:733.	May 5, 1950, ch. 169, §1 (Art. 137), 64 Stat. 144.

The word ''each'' is substituted for the word ''every''. The word ''member'' is substituted for the word ''person''. The words ''in [any of] the armed forces of the United States'' are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsecs. (a)(1) and (b), is classified to this chapter.

AMENDMENTS

1986—Pub. L. 99–661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
938	50:734.	May 5, 1950, ch. 169, §1 (Art. 138), 64 Stat. 144.

The words ''commanding officer'' are substituted for the word ''commander''. The word ''who'' is inserted after the word ''and''. The word ''commissioned'' is inserted after the word ''superior'' for clarity. The words ''The officer exercising general court-martial jurisdiction'' are substituted for the words ''That officer'' for clarity. The word ''send'' is substituted for the word ''transmit''. The word ''Secretary'' is substituted for the word ''Department'' for accuracy, since the ''Department'', as an entity, could not act upon the complaint.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
939(a)	50:735(a).	May 5, 1950, ch. 169, §1 (Art. 139), 64 Stat. 144.
939(b)	50:735(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''under'' is substituted for the words ''subject to''. The words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1. The words ''it has'' are substituted for the words ''shall have'' in the second sentence. The word ''is'' is substituted for the words ''shall be'' before the words ''subject'' and ''conclusive''. The word ''commissioned'' is inserted for clarity.

In subsection (b), the word ''If'' is substituted for the word ''Where''. The word ''considered'' is substituted for the word ''deemed''.

CROSS REFERENCES

Article to be explained, see section 937 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
940	50:736.	May 5, 1950, ch. 169, §1 (Art. 140), 64 Stat. 145.

The word ''may'' is substituted for the words ''is authorized to * * * to''.

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec.	Art.	
941.	141.	Status.
942.	142.	Judges.
943.	143.	Organization and employees.
944.	144.	Procedure.
945.	145.	Annuities for judges and survivors.
946.	146.	Code committee.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted ''UNITED STATES COURT OF APPEALS FOR THE ARMED

FORCES'' for ''COURT OF MILITARY APPEALS'' as subchapter heading.

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

§941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103–337, div. A, title IX, §924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

CHANGE OF NAME

Section 924(a)(1) of Pub. L. 103–337 provided that: ''The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces.''

§942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after March 31 and before October 1 of any year, the term shall expire on September 30 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after September 30 of any year and before April 1 of the following year, the term shall expire fifteen years after such September 30.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committees on Armed Services of the Senate and the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any

other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101–510, div. A, title V, § 541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102–190, div. A, title X, § 1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsecs. (a), (f)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1991—Subsec. (e)(1). Pub. L. 102–190, § 1061(b)(1)(A)(i)–(iv), designated existing provisions as subpar. (A), struck out ''(2)(A)'' before ''The chief judge'', moved sentence beginning ''The chief judge of the court'' to end of par. (1)(A), substituted ''an individual who is a senior judge of the court under this subparagraph'' for ''a senior judge of the court'', and added subpar. (B).

Subsec. (e)(2). Pub. L. 102–190, § 1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102–190, § 1061(b)(1)(B), substituted ''paragraph (1)'' for ''paragraph (2)'' wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102–190, § 1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102–190, § 1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101–510, § 541(f)(1), substituted ''civilian life'' for ''civil life''.

Subsec. (b)(4). Pub. L. 101–510, § 541(f)(2), added par. (4).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1061(b)(1)(D) of Pub. L. 102–190 provided that: ''The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989.''

TRANSITIONAL PROVISIONS

Section 1301(d)–(i) of Pub. L. 101–189 provided that:

''(d) TRANSITION FROM THREE-JUDGE COURT TO FIVE-JUDGE COURT.—(1) Effective during the period before October 1, 1990—

''(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

''(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

''(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judges who are first appointed to the two new positions of the court created as of October 1, 1990—

''(A) with respect to one such judge (as designated by the President at the time of appointment), the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven; and

''(B) with respect to the other such judge (as designated by the President at the time of appointment), the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the thirteenth anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being thirteen.

''(e) TRANSITION RULES RELATING TO RETIREMENT OF NEW JUDGES.—(1) Except as otherwise provided in paragraphs (2) and (3), each judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

''(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

''(A) completes the term of service for which he is first appointed;

''(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] at any time after the completion of such term of service;

''(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

''(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

''(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be 1/15 of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge's service as a judge of the court.

''(f) APPLICABILITY OF AMENDED RETIREMENT PROVISIONS.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

''(g) TERMS OF CURRENT JUDGES.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

''(h) CIVIL SERVICE STATUS OF CURRENT EMPLOYEES.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989].

''(i) TERMINATION OF AUTHORITY RELATING TO SERVICE OF ARTICLE III JUDGES AFTER 5 YEARS.—The authority of the Chief Justice of the United States under section 942(f) of title 10, United States Code, as enacted by subsection (c), shall terminate on September 30, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 945 of this title; title 5 section 8337.

§943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF ATTORNEY POSITIONS.—(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. Appointments to such positions shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–484, div. A, title X, §1061(a)(1), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsecs. (a)(1), (c). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''CHIEF JUDGE.—The President shall designate from time to time one of the judges of the United States Court of Military Appeals to be chief judge of the court.''

TRANSITION PROVISION

Section 1061(b) of Pub. L. 102–484 provided that: ''For purposes of section 943(a) (article 943(a)) of title 10, United States Code, as amended by subsection (a)—

''(1) the person serving as the chief judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the date of the enactment of this Act [Oct. 23, 1992] shall be deemed to have been designated as the chief judge under such section; and

''(2) the five-year term provided in paragraph (3) of such section shall be deemed to have begun on the date on which such judge was originally designated as the chief judge under section 867(a) or 943 of title 10, United States Code, as the case may be, as that provision of law was in effect on the date of the designation.''

INAPPLICABILITY OF SUBSECTION (c)

Subsec. (c) of this section not to be applied to change civil service status of any attorney who is an employee of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on Nov. 28, 1989, see section 1301(h) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

§ 945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason

of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–190, div. A, title X, §1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102–484, div. A, title X, §§1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (i), is section 301(a)(2) and (d) of Pub. L. 99–335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a)(1). Pub. L. 102–484, §1052(11), substituted ''section 942(e)(1)(B) of this title (article 142(e)(1)(B))'' for ''section 943(e)(1)(B) of this title (art. 143(e)(1)(B))''.

Subsec. (i). Pub. L. 102–484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102–190 inserted at end ''A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1062(a)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102–190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Section 1062(b) of Pub. L. 102–484 provided that:

''(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note] if—

''(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) as of the date of the election, such individual is—

''(i) subject to the Civil Service Retirement System; or

''(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

''(2) An election under this subsection—

''(A) shall not be effective unless it is—

''(i) made within 30 days after the date of the enactment of this Act; and

''(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note]; and

''(B) may not be revoked.

''(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 942 of this title.

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committees on Armed Services of the Senate and House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Any recommendation of the committee relating to—

(i) uniformity of policies as to sentences;

(ii) amendments to this chapter; and

(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.
955. Prisoners transferred to or from foreign countries.
956. Deserters, prisoners, members absent without leave: expenses and rewards.

AMENDMENTS

1984—Pub. L. 98–525, title XIV, § 1401(b)(2), Oct. 19, 1984, 98 Stat. 2615, added item 956.

1980—Pub. L. 96–513, title V, § 511(26), Dec. 13, 1980, 94 Stat. 2922, added item 955.

§ 951. Establishment; organization; administration

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities as are necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall—

(1) designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired at such facilities.

(Added Pub. L. 90–377, § 1, July 5, 1968, 82 Stat. 287; amended Pub. L. 96–513, title V, § 511(27), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–513 substituted ''at such facilities'' for ''as such facilities''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

NOTIFICATION OF VICTIMS AND WITNESSES OF STATUS OF PRISONERS IN MILITARY CORRECTIONAL FACILITIES

Pub. L. 103–160, div. A, title V, § 552, Nov. 30, 1993, 107 Stat. 1662, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall prescribe procedures and implement a centralized system for notice of the status of offenders confined in military correctional facilities to be provided to victims and witnesses. Such procedures shall, to the maximum

extent practicable, be consistent with procedures of the Federal Bureau of Prisons for victim and witness notification.

''(b) DEADLINE FOR PRESCRIBING PROCEDURES.—The Secretary of Defense—

''(1) shall prescribe the procedures required by subsection (a) not later than six months after the date of the enactment of this Act [Nov. 30, 1993]; and

''(2) shall implement the centralized system required by that section not later than six months after those procedures are prescribed.

''(c) NOTIFICATION AND REPORTING REQUIREMENT.—(1) Upon implementation of the centralized system of notice under subsection (a), the Secretary shall notify Congress of such implementation.

''(2) After such system has been in operation for one year, the Secretary shall submit to Congress a report detailing the lessons learned during the first year of operation.

''(d) TERMINATION OF REQUIREMENT.—The requirement to establish procedures and implement a centralized system of notice under subsection (a) shall expire 90 days after the receipt of the report required by subsection (c)(2).''

§952. Parole

The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 287.)

§953. Remission or suspension of sentence; restoration to duty; reenlistment

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish—

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged; and

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 287.)

§954. Voluntary extension; probation

The Secretary concerned may provide for persons who were subject to this authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 288.)

§955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to such foreign country any offender against chapter 47 of this title. Such transfer shall be effected subject to the terms of such treaty and chapter 306 of title 18.

(b) Whenever the United States is party to an agreement on the status of forces under which the United States may request that it take custody of a prisoner belonging to its armed forces who is confined by order of a foreign court, the Secretary concerned may provide for the carrying out of the terms of such confinement in a military correctional facility of his department or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Except as otherwise specified in such agreement, such person shall be treated as if he were an offender against chapter 47 of this title.

(Added Pub. L. 95–144, §4, Oct. 28, 1977, 91 Stat. 1221; amended Pub. L. 96–513, title V, §511(28), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''such'' for ''said'' in two places, ''Such'' for ''Said'', and struck out '', United States Code'' after ''18''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§956. Deserters, prisoners, members absent without leave: expenses and rewards

Funds appropriated to the Department of Defense may be used for the following purposes:

(1) Expenses for the apprehension and delivery of deserters, prisoners, and members absent without leave, including the payment of rewards, in an amount not to exceed $75, for the apprehension of any such person.

(2) Expenses of prisoners confined in nonmilitary facilities.

(3) Payment of a gratuity of not to exceed $25 to each prisoner upon release from confinement in a military or contract prison facility.

(4) The issue of authorized articles to prisoners and other persons in military custody.

(5) Under such regulations as the Secretary concerned may prescribe, expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in the custody of the Army, Navy, or Air Force whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in the custody of the Army, Navy, or Air Force pursuant to Presidential proclamation.

(Added Pub. L. 98–525, title XIV, §1401(b)(1), Oct. 19, 1984, 98 Stat. 2614.)

PRIOR PROVISIONS

Provisions similar to those in pars. (1) to (5) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (2) which first appeared in the act of July 1, 1943:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h)[title VIII, §8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, §§706, 709, 97 Stat. 1437, 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, §§ 706, 709], 96 Stat. 1833, 1850, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, §§ 706, 709, 95 Stat. 1578, 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §§ 706, 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §§ 706, 709, 93 Stat. 1152, 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §§ 806, 809, 92 Stat. 1243, 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §§ 805, 808, 91 Stat. 899, 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, §§ 705, 708, 90 Stat. 1291, 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, §§ 705, 708, 90 Stat. 168, 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §§ 805, 808, 88 Stat. 1224, 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §§ 705, 708, 87 Stat. 1038, 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, §§ 705, 708, 86 Stat. 1196, 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, §§ 705, 708, 85 Stat. 727, 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §§ 805, 808, 84 Stat. 2030, 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, §§ 605, 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §§ 504, 507, 82 Stat. 1129, 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, §§ 604, 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §§ 604, 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §§ 604, 607, 79 Stat. 873, 874.
Aug. 19, 1964, Pub. L. 88–446, title V, §§ 504, 507, 78 Stat. 474, 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §§ 504, 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title I, § 101, title V, §§ 504, 507, 76 Stat. 318, 328.
Aug. 17, 1961, Pub. L. 87–144, title I, § 101, title II, § 201, title VI, §§ 604, 607, 75 Stat. 365–369, 375, 376.
July 7, 1960, Pub. L. 86–601, title I, § 101, title II, § 201, title V, §§ 504, 507, 74 Stat. 338–340, 342, 350.
Aug. 18, 1959, Pub. L. 86–166, title I, § 101, title II, § 201, title V, §§ 604, 607, 73 Stat. 366–368, 370, 378, 379.
Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, title VI, § 604, 72 Stat. 713, 714, 721, 722, 723.
Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, title VI, § 604, 71 Stat. 313, 314, 321, 323.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, title VI, § 604, 70 Stat. 456, 457, 464, 465, 467.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, title VI, § 606, 69 Stat. 303, 304, 312, 313, 315.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, title VII, § 706, 68 Stat. 338, 339, 347, 348, 350.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, title VI, § 610, 67 Stat. 338, 339, 348, 350.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, title VI, § 612, 66 Stat. 519, 520, 530, 532.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, title VI, § 612, 65 Stat. 426, 429, 443, 446.
Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, title VI, § 614, 64 Stat. 732, 735, 750, 753.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, title VI, § 616, 63 Stat. 990–992, 1015, 1020.
June 24, 1948, ch. 632, §§ 1, 11, 62 Stat. 653, 655, 669.
July 30, 1947, ch. 357, title I, §§ 1, 12, 61 Stat. 555, 557, 572.
July 16, 1946, ch. 583, §§ 1, 13, 60 Stat. 546–548, 565.
July 3, 1945, ch. 265, §§ 1, 15, 59 Stat. 388–390, 406.
June 28, 1944, ch. 303, §§ 1, 15, 58 Stat. 578, 580, 595.
July 1, 1943, ch. 185, §§ 1, 15, 57 Stat. 352, 354, 369.
July 2, 1942, ch. 477, §§ 1, 14, 56 Stat. 615, 617, 633.
Dec. 17, 1941, ch. 591, title I, § 103, 55 Stat. 813.
June 30, 1941, ch. 262, § 1, 55 Stat. 371, 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 357–359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598, 600.
June 11, 1938, ch. 37, § 1, 52 Stat. 648, 649.
July 1, 1937, ch. 423, § 1, 50 Stat. 448, 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1284, 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 127, 128.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 619, 621.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575, 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 668, 670, 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281–1284.
May 28, 1930, ch. 348, title I, 46 Stat. 436, 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354, 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 330, 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110, 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 259, 262.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

Provisions similar to those in par. (5) of this section were contained in Pub. L. 98–212, title VII, § 706, Dec. 8, 1983, 97 Stat. 1437, which was set out as a note under section 138 of this title, prior to repeal by Pub. L. 98–525, §§ 1403(a)(1), eff. Oct. 1, 1985.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

CROSS REFERENCES

Expenses for apprehension and delivery of deserters, stragglers, and prisoners of the Navy, see section 7214 of this title.

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman.
972. Enlisted members: required to make up time lost.
973. Duties: officers on active duty; performance of civil functions restricted.
974. Civilian employment: enlisted members.
[975. Renumbered.]
976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.
977. Operation of commissary stores: assignment of active duty members generally prohibited.
978. Drug and alcohol abuse and dependency: testing of new entrants.
979. Prohibition on loan and grant assistance to persons convicted of certain crimes.
980. Limitation on use of humans as experimental subjects.
981. Limitation on number of enlisted aides.
982. Members: service on State and local juries.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title III, § 351(b), Nov. 30, 1993, 107 Stat. 1627, added item 977.

1989—Pub. L. 101–189, div. A, title XVI, § 1622(b)(3), Nov. 29, 1989, 103 Stat. 1604, struck out item 975 ''Prohibition on the sale of certain defense articles from the stocks of the Department of Defense''.

1988—Pub. L. 100–456, div. A, title V, § 521(a)(2), Sept. 29, 1988, 102 Stat. 1973, substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in item 978.

1987—Pub. L. 100–180, div. A, title V, § 513(a)(2), Dec. 4, 1987, 101 Stat. 1091, substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in item 978.

1986—Pub. L. 99–661, div. A, title V, § 502(b), Nov. 14, 1986, 100 Stat. 3864, added item 982.

1984—Pub. L. 98–525, title XIV, § 1401(c)(2), Oct. 19, 1984, 98 Stat. 2615, added items 979 to 981.

1982—Pub. L. 97–306, title IV, §408(c)(2), Oct. 14, 1982, 96 Stat. 1446, struck out item 977 ''Denial of certain benefits to persons who fail to complete at least two years of an original enlistment''.

Pub. L. 97–295, §1(14)(B), Oct. 12, 1982, 96 Stat. 1290, added item 978.

1980—Pub. L. 96–513, title V, §501(12), Dec. 12, 1980, 94 Stat. 2908, substituted ''officers on active duty'' for ''Regular officers'' in item 973.

Pub. L. 96–342, title X, §1002(b), Sept. 8, 1980, 94 Stat. 1119, added item 977.

1979—Pub. L. 96–107, title VIII, §821(b), Nov. 9, 1979, 93 Stat. 820, redesignated item 975 relating to membership in military unions as 976.

1978—Pub. L. 95–610, §2(b), Nov. 8, 1978, 92 Stat. 3088, added item 975 relating to military unions.

Pub. L. 95–485, title VIII, §815(b), Oct. 20, 1978, 92 Stat. 1626, added item 975 relating to sale of certain defense articles.

1968—Pub. L. 90–235, §§4(a)(5)(B), 6(a)(6)(B), Jan. 2, 1968, 81 Stat. 759, 762, added items 973 and 974.

1958—Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1442, added items 971 and 972.

§971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman

(a) The period of service under an enlistment or period of obligated service while also serving as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Naval Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force.

(b) In computing length of service for any purpose—

(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy;

(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; and

(3) no officer of the Coast Guard may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy.

(Added Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1442; amended Pub. L. 90–235, §6(a) (1), Jan. 2, 1968, 81 Stat. 761; Pub. L. 98–557, §17(a), Oct. 30, 1984, 98 Stat. 2867; Pub. L. 101–189, div. A, title VI, §652(a)(1)(A), (2), Nov. 29, 1989, 103 Stat. 1461.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
971	50:1414.	June 25, 1956, ch. 439, §4, 70 Stat. 333.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189, §652(a)(1)(A), struck out '', under an appointment accepted after June 25, 1956,'' after ''Naval Reserve''.

Subsec. (b)(1). Pub. L. 101–189, §652(a)(2)(A), struck out '', if he was appointed as a midshipman or cadet after March 4, 1913'' after ''United States Coast Guard Academy''.

Subsec. (b)(2). Pub. L. 101–189, §652(a)(2)(B), struck out '', if he was appointed as a midshipman or cadet after August 24, 1912'' after ''United States Coast Guard Academy''.

1984—Subsec. (b)(3). Pub. L. 98–557 added par. (3).

1968—Pub. L. 90–235 designated existing provisions as subsec. (a) and added subsec. (b).

APPLICATION OF SUBSECTION (a) TO SERVICE UNDER APPOINTMENT ACCEPTED BEFORE JUNE 26, 1956

Section 652(a)(1)(B) of Pub. L. 101–189 provided that: ''The limitation in section 971(a) of title 10, United States Code, shall not apply with respect to a period of service referred to in that section while also serving under an appointment as a cadet or midshipman accepted before June 26, 1956.''

§972. Enlisted members: required to make up time lost

An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

(4) is confined for more than one day under a sentence that has become final; or

(5) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

(Added Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
972	10 App.:629a. 34 App.:183b.	July 24, 1956, ch. 692, §1, 70 Stat. 631.

CROSS REFERENCES

Absence without leave, punishment, see section 886 of this title.

Retirement, years of service to exclude time made up under this section, see sections 3925 and 8925 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 1405, 3925, 8925 of this title.

§973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

(d) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(Added Pub. L. 90–235, § 4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 96–513, title I, § 116, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 98–94, title X, § 1002(a), Sept. 24, 1983, 97 Stat. 655; Pub. L. 101–510, div. A, title V, § 556, Nov. 5, 1990, 104 Stat. 1570.)

AMENDMENTS

1990—Subsecs. (c), (d). Pub. L. 101–510 added subsec. (c) and redesignated former subsec. (c) as (d).

1983—Subsec. (b). Pub. L. 98–94 amended subsec. (b) generally. Prior to amendment subsec. (b) provided that, except as otherwise provided by law, no regular officer of an armed force on active duty could hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State, and that acceptance of such a civil office or the exercise of its functions by such an officer terminated his military appointment.

Subsec. (c). Pub. L. 98–94 added subsec. (c).

1980—Pub. L. 96–513, § 116(c), substituted ''officers on active duty'' for ''regular officers'' in section catchline.

Subsec. (a). Pub. L. 96–513, § 116(a), substituted ''of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

Subsec. (b). Pub. L. 96–513, § 116(b), substituted ''regular officer of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

CONSTRUCTION AND APPLICABILITY OF SECTION 973(b)

Section 1002(b), (c) of Pub. L. 98–94 provided that:

''(b) Nothing in section 973(b) of title 10, United States Code, as in effect before the date of the enactment of this Act [Sept. 24, 1983], shall be construed—

''(1) to invalidate any action undertaken by an officer of an Armed Force in furtherance of assigned official duties; or

''(2) to have terminated the military appointment of an officer of an Armed Force by reason of the acceptance of a civil office, or the exercise of its functions, by that officer in furtherance of assigned official duties.

''(c) Nothing in section 973(b)(3) of title 10, United States Code, as added by subsection (a), shall preclude a Reserve office to whom such section applies from holding or exercising the functions of an office described in such section for the term to which the Reserve officer was elected or appointed if, before the date of the enactment of this Act [Sept. 24, 1983], the Reserve officer accepted appointment or election to that office in accordance with the laws and regulations in effect at the time of such appointment or election.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Reduction in retired or retirement pay during term of employment, see section 5532 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 806 of this title; title 40 section 758; title 44 section 2105.

§ 974. Civilian employment: enlisted members

Except as provided in sections 3634, 6223, and 8634 of this title and section 640 of title 14, no enlisted member of an armed force on active duty may be ordered or permitted to leave his post to engage in a civilian pursuit or business, or a performance in civil life, for emolument, hire, or otherwise, if the pursuit, business, or performance interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(Added Pub. L. 90–235, § 6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762; amended Pub. L. 101–510, div. A, title III, § 327(e), Nov. 5, 1990, 104 Stat. 1532.)

AMENDMENTS

1990—Pub. L. 101–510 substituted ''sections 3634, 6223, and 8634 of this title and section 640 of title 14,'' for ''section 6223 of this title''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

[§975. Renumbered §2390]

§976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term ''member of the armed forces'' means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term ''military labor organization'' means any organization that engages in or attempts to engage in—

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term ''civilian officer or employee'' means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall, in the case of an individual, be fined not more than $10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than $25,000 and not more than $250,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a ''military labor organization'' as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(Added Pub. L. 95–610, § 2(a), Nov. 8, 1978, 92 Stat. 3085, § 975; renumbered § 976, Pub. L. 96–107, title VIII, § 821(a), Nov. 9, 1979, 93 Stat. 820; amended Pub. L. 98–525, title IV, § 414(a)(6), Oct. 19, 1984, 98 Stat. 2519; Pub. L. 99–661, div. A, title XIII, § 1343(a)(2), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Subsec. (a)(1) to (3). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each paragraph and substituted lowercase letter.

1986—Subsec. (a)(1). Pub. L. 99–661 struck out the second of two commas before ''(B)''.

1984—Subsec. (a)(1). Pub. L. 98–525 added cl. (B) and redesignated existing cl. (B) as (C).

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 95–610 provided that:

''(a) The Congress makes the following findings:

''(1) Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

''(2) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

''(3) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

''(4) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

''(5) Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

''(6) The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.

''(b) The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States.''

§ 977. Operation of commissary stores: assignment of active duty members generally prohibited

(a) GENERAL RULE.—A member of the armed forces on active duty may not be assigned to the operation of a commissary store.

(b) EXCEPTION FOR DCA DIRECTOR.—The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

(c) EXCEPTION FOR CERTAIN ADDITIONAL MEMBERS.—Beginning on October 1, 1996, not more than 18 members (in addition to the officer referred to in subsection (b)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subsection to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisors in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

(d) EXCEPTION FOR CERTAIN NAVY PERSONNEL.—(1) The Secretary of the Navy may assign to the Defense Commissary Agency a member of the Navy on active duty whose assignment afloat is part of the operation of a ship's food service or a ship's store. Any such assignment shall be on a nonreimbursable basis.

(2) The number of such members assigned to the Defense Commissary Agency during any period before October 1, 1996, may not exceed the number of such members so assigned on October 1, 1993. After September 30, 1996, the number of such members so assigned may not exceed the lesser of (A) the number of members so assigned on October 1, 1993, and (B) 400.

(Added Pub. L. 103–160, div. A, title III, § 351(a), Nov. 30, 1993, 107 Stat. 1626.)

PRIOR PROVISIONS

A prior section, added Pub. L. 96–342, title X, § 1002(a), Sept. 8, 1980, 94 Stat. 1119; amended Pub. L. 97–22, § 11(a)(1), July 10, 1981, 95 Stat. 137, provided that no one who originally enlisted after Sept. 7, 1980, in a regular armed services component and failed to serve at least 24 months of such enlistment would be eligible for Federal benefits otherwise receivable because of active service under such enlistment, except that such exclusion was not applicable to one discharged under section 1173 of chapter 61 of this title or to one later proved to be suffering from a disability resulting from an injury or disease incurred during enlistment, prior to repeal by Pub. L. 97–306, title IV, § 408(c)(1), Oct. 14, 1982, 96 Stat. 1446. See section 5303A of Title 38, Veterans' Benefits, and provisions set out as notes under that section.

§ 978. Drug and alcohol abuse and dependency: testing of new entrants

(a)(1) The Secretary concerned shall require that, except as provided under paragraph (2), each person applying for an original enlistment or appointment in the armed forces shall be required, before becoming a member of the armed forces, to—

(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

(B) be evaluated for drug and alcohol dependency.

(2) The Secretary concerned may provide that, in lieu of undergoing the testing and evaluation described in paragraph (1) before becoming a member of the armed forces, a member of the armed forces under the Secretary's jurisdiction may be administered that testing and evaluation after the member's initial entry on active duty. In any such case, the testing and evaluation shall be carried out within 72 hours of the member's initial entry on active duty.

(3) The Secretary concerned shall require an applicant for appointment as a cadet or midshipman to undergo the testing and evaluation described in paragraph (1) within 72 hours of such appointment. The Secretary concerned shall require a person to whom a commission is offered under section 2106 of this title following completion of the program of advanced training under the Reserve Officers' Training Corps program to undergo such testing and evaluation before such an appointment is executed.

(b) A person who refuses to consent to testing and evaluation required by subsection (a) may not (unless that person subsequently consents to such testing and evaluation)—

(1) be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces; or

(2) if such person is already a member of the armed forces, be retained in the armed forces.

An original appointment of any such person as an officer shall be terminated.

(c)(1) A person determined, as the result of testing conducted under subsection (a)(1), to be dependent on drugs or alcohol shall be denied entrance into the armed forces.

(2) The enlistment or appointment of a person who is determined, as a result of an evaluation conducted under subsection (a)(2), to be dependent on drugs or alcohol at the time of such enlistment or appointment shall be void.

(3) A person who is denied entrance into the armed forces under paragraph (1), or whose enlistment or appointment is voided under paragraph (2), shall be referred to a civilian treatment facility.

(4) The Secretary concerned may place on excess leave any member of the armed forces whose test results under subsection (a)(2) are positive for drug or alcohol use. The Secretary may continue such member's status on excess leave pending disposition of the member's case and processing for administrative separation.

(d) The testing and evaluation required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Transportation. Those regulations shall apply uniformly throughout the armed forces.

(e) In time of war, or time of emergency declared by Congress or the President, the President may suspend the provisions of subsection (a).

(Added Pub. L. 97–295, §1(14)(A), Oct. 12, 1982, 96 Stat. 1289; amended Dec. 4, 1987, Pub. L. 100–180, div. A, title V, §513(a)(1), 101 Stat. 1091; Pub. L. 100–456, div. A, title V, §521(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 101–189, div. A, title V, §513(a)–(c), Nov. 29, 1989, 103 Stat. 1440; Pub. L. 101–510, div. A, title XIV, §1484(k)(4), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 103–160, div. A, title V, §572, Nov. 30, 1993, 107 Stat. 1673.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
978	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, §501(a)(2), (b), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus. The word ''person'' is substituted for ''individuals'' for consistency. The text of subsection (b) is omitted as executed.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103–160 substituted ''within 72 hours of such appointment'' for ''during the physical examination given the applicant before such appointment'' and ''before such an appointment is executed'' for ''during the precommissioning physical examination given such person''.

1990—Subsec. (c)(3). Pub. L. 101–510 struck out ''a'' before ''whose enlistment''.

1989—Subsec. (a)(1). Pub. L. 101–189, §513(a)(2), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), the Secretary concerned shall require each member of the armed forces under the Secretary's jurisdiction, within 72 hours after the member's initial entry on active duty after enlistment or appointment, to—

''(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

''(B) be evaluated for drug and alcohol dependency.''

Subsec. (a)(2), (3). Pub. L. 101–189, §513(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 101–189, §513(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A person who refuses to consent to testing and evaluation required by subsection (a) may not be retained in the armed forces, and any original appointment of such person as an officer shall be terminated, unless that person consents to such testing and evaluation.''

Subsec. (c)(1). Pub. L. 101–189, §513(b)(2)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 101–189, §513(b)(2)(A), (C), redesignated par. (1) as (2) and substituted ''subsection (a)(2)'' for ''subsection (a)(1)(B)''. Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 101–189, §513(b)(2)(A), (D), redesignated par. (2) as (3), inserted ''who is denied entrance into the armed forces under paragraph (1), or a'' after ''A person'', and substituted ''paragraph (2),'' for ''paragraph (1)''.

Subsec. (c)(4). Pub. L. 101–189, §513(c), added par. (4).

1988—Pub. L. 100–456 substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in section catchline, and amended text generally. Prior to amendment, text read as follows:

''(a) Before a person becomes a member of the armed forces, such person shall be required to undergo testing for drug, chemical, and alcohol use and dependency.

''(b) A person who refuses to consent to testing required by subsection (a) may not be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces unless that person consents to such testing.

''(c) A person determined, as the result of testing conducted under subsection (a), to be dependent on drugs, chemicals, or alcohol shall be—

''(1) denied entrance into the armed forces; and

''(2) referred to a civilian treatment facility.

''(d) The testing required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Transportation. Those regulations shall apply uniformly throughout the armed forces.''

1987—Pub. L. 100–180 substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (d) provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 513(d) of Pub. L. 101–189 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect as of October 1, 1989.''

REGULATIONS; IMPLEMENTATION OF PROGRAM

Section 521(b), (c) of Pub. L. 100–456 provided that:

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 60 days after the date of the enactment of this Act [Sept. 29, 1988].

''(c) EFFECTIVE DATE.—The testing and evaluation program prescribed by that section shall be implemented not later than October 1, 1989.''

IMPLEMENTATION

Section 513(b) of Pub. L. 100–180, as amended by Pub. L. 100–456, div. A, title V, § 521(d), Sept. 29, 1988, 102 Stat. 1973, provided that:

''(1) The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 45 days after the date of the enactment of this Act [Dec. 4, 1987].

''(2) [Repealed. Pub. L. 100–456, div. A, title V, § 521(d), Sept. 29, 1988, 102 Stat. 1973].''

§ 979. Prohibition on loan and grant assistance to persons convicted of certain crimes

Funds appropriated to the Department of Defense may not be used to provide a loan, a guarantee of a loan, or a grant to any person who has been convicted by a court of general jurisdiction of any crime which involves the use of (or assisting others in the use of) force, trespass, or the seizure of property under the control of an institution of higher education to prevent officials or students of the institution from engaging in their duties or pursuing their studies.

(Added Pub. L. 98–525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8027], Oct. 12, 1984, 98 Stat. 1904, 1928.

Pub. L. 98–212, title VII, § 732, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, § 101(c) [title VII, § 735], Dec. 21, 1982, 96 Stat. 1833, 1856.

Pub. L. 97–114, title VII, § 736, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, § 737, Dec. 15, 1980, 94 Stat. 3087.

Pub. L. 96–154, title VII, § 739, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, § 839, Oct. 13, 1978, 92 Stat. 1250.

Pub. L. 95–111, title VIII, § 838, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, § 737, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, § 737, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, § 838, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, § 740, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, § 740, Oct. 26, 1972, 86 Stat. 1203.

Pub. L. 92–204, title VII, § 741, Dec. 18, 1971, 85 Stat. 734.

Pub. L. 91–668, title VIII, § 841, Jan. 11, 1971, 84 Stat. 2037.

Pub. L. 91–171, title VI, § 641, Dec. 29, 1969, 83 Stat. 486.

Pub. L. 90–580, title V, § 540, Oct. 17, 1968, 82 Stat. 1136.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 980. Limitation on use of humans as experimental subjects

Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

(1) the informed consent of the subject is obtained in advance; or

(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

(Added Pub. L. 98–525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8029], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, § 734, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, § 101(c) [title VII, § 737], Dec. 21, 1982, 96 Stat. 1833, 1857.

Pub. L. 97–114, title VII, § 738, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, § 739, Dec. 15, 1980, 94 Stat. 3088.

Pub. L. 96–154, title VII, § 741, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, § 841, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, § 840, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, § 739, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, § 740, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, § 841, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, § 743, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, § 745, Oct. 26, 1972, 86 Stat. 1203.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two

times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 98–525, title XIV, §1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in Pub. L. 94–106, title VIII, §820(a), Oct. 7, 1975, 89 Stat. 544, prior to repeal by Pub. L. 98–525, §§1403(c), 1404, eff. Oct. 1, 1985.

Provisions similar to those in subsec. (b) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8034], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub. L. 98–212, title VII, §742, Dec. 8, 1983, 97 Stat. 1446.

Pub. L. 97–377, title I, §101(c)[title VII, §745], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, §746, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, §747, Dec. 15, 1980, 94 Stat. 3089.

Pub. L. 96–154, title VII, §748, Dec. 21, 1979, 93 Stat. 1160.

Pub. L. 95–457, title VIII, §848, Oct. 13, 1978, 92 Stat. 1252.

Pub. L. 95–111, title VIII, §849, Sept. 21, 1977, 91 Stat. 908.

Pub. L. 94–419, title VII, §748, Sept. 22, 1976, 90 Stat. 1299.

Pub. L. 94–212, title VII, §745, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, §848, Oct. 8, 1974, 88 Stat. 1232.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§982. Members: service on State and local juries

(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned determines that such service—

(1) would unreasonably interfere with the performance of the member's military duties; or

(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

(b) A determination by the Secretary concerned under this section is conclusive.

(c) The Secretary concerned shall prescribe regulations for the administration of this section.

(d) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(Added Pub. L. 99–661, div. A, title V, §502(a), Nov. 14, 1986, 100 Stat. 3863.)

CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
1001. Reference to chapter 1219.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1662(h)(5), Oct. 5, 1994, 108 Stat. 2997, added item 1001 and struck out former items 1001 to 1007.

1960—Pub. L. 86–559, §1(3)(C), June 30, 1960, 74 Stat. 265, inserted ''or serving as United States property and fiscal officers'' in item 1007.

1958—Pub. L. 85–861, §1(23), Sept. 2, 1958, 72 Stat. 1445, added items 1002, 1005, 1006, and 1007.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 113 of this title.

§1001. Reference to chapter 1219

Provisions of law relating to standards and procedures for retention and promotion of members of reserve components are set forth in chapter 1219 of this title (beginning with section 12641).

(Added Pub. L. 103–337, div. A, title XVI, §1662(h)(5), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Prior sections 1001 and 1002 were renumbered sections 12641 and 12642 of this title, respectively.

A prior section 1003, act Aug. 10, 1956, ch. 1041, 70A Stat. 79, related to age limitations for reserve officers, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1662(h)(3), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

Prior sections 1004 to 1007 were renumbered sections 12644 to 12647 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1031. Administration of oath.
1032. Disability and death compensation: dependents of members held as captives.
[1033. Repealed.]
1034. Protected communications; prohibition of retaliatory personnel actions.
1035. Deposits of savings.
1036. Escorts for dependents of members: transportation and travel allowances.
1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.
1038. Service credit: certain service in Women's Army Auxiliary Corps.
1039. Crediting of minority service.
1040. Transportation of dependent patients.
1041. Replacement of certificate of discharge.
1042. Copy of certificate of service.
1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service.
1044. Legal assistance.
1044a. Authority to act as notary.
1044b. Military powers of attorney: requirement for recognition by States.
1045. Voluntary withholding of State income tax from retired or retainer pay.
1046. Overseas temporary foster care program.
1047. Allowance for civilian clothing.
1048. Gratuity payment to persons discharged for fraudulent enlistment.
1049. Subsistence: miscellaneous persons.
1050. Latin American cooperation: payment of personnel expenses.

Sec.
1051. Bilateral or regional cooperation programs: payment of personnel expenses.
1052. Reimbursement for adoption expenses.
1053. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay.
1054. Defense of certain suits arising out of legal malpractice.
1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord.
1056. Relocation assistance programs.
1057. Use of armed forces insignia on State license plates.
1058. Responsibilities of military law enforcement officials at scenes of domestic violence.
1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits.
1060. Military service of retired members with newly democratic nations: consent of Congress.
1060a. Special supplemental food program.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title V, §§ 531(g)(2), 535(c)(2), title VI, § 653(b), title X, § 1070(a)(5)(B), (6)(B), title XVI, § 1671(b)(9), Oct. 5, 1994, 108 Stat. 2758, 2763, 2795, 2855, 3013, struck out item 1033 ''Compensation: Reserve on active duty accepting from any person'', substituted ''Protected communications;'' for ''Communicating with a Member of Congress or Inspector General;'' in item 1034, redesignated item 1058 ''Dependents of members separated for dependent abuse: transitional compensation'' as item 1059 and amended it generally, redesignated item 1058 ''Military service of retired members with newly democratic nations: consent of Congress'' as item 1060, and added item 1060a.

Pub. L. 103–337, div. A, title X, § 1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, made technical correction to Pub. L. 103–160, § 554(a)(2). See 1993 Amendment note below.

1993—Pub. L. 103–160, div. A, title V, §§ 551(a)(2), 574(b), title XIV, § 1433(b)(2), Nov. 30, 1993, 107 Stat. 1662, 1675, 1834, added item 1044b and items 1058 ''Responsibilities of military law enforcement officials at scenes of domestic violence'' and 1058 ''Military service of retired members with newly democratic nations: consent of Congress''.

Pub. L. 103–160, div. A, title V, § 554(a)(2), Nov. 30, 1993, 107 Stat. 1666, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, added item 1058 ''Dependents of members separated for dependent abuse: transitional compensation''.

1992—Pub. L. 102–484, div. A, title VI, § 651(b), title X, § 1080(b), Oct. 23, 1992, 106 Stat. 2426, 2514, added items 1046 and 1057.

1991—Pub. L. 102–190, div. A, title VI, § 651(a)(2), Dec. 5, 1991, 105 Stat. 1386, added item 1052.

Pub. L. 102–25, title VII, § 701(e)(8)(B), Apr. 6, 1991, 105 Stat. 115, struck out ''mandatory'' after ''error in'' in item 1053.

1990—Pub. L. 101–510, div. A, title V, §§ 502(b)(2), 551(a)(2), title XIV, § 1481(c)(2), Nov. 5, 1990, 104 Stat. 1557, 1566, 1705, added items 1044a and 1056 and struck out item 1046 ''Preseparation counseling requirement''.

1989—Pub. L. 101–189, div. A, title VI, § 664(a)(3)(B), Nov. 29, 1989, 103 Stat. 1466, substituted ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of'' in item 1053.

1988—Pub. L. 100–456, div. A, title VI, § 621(a)(2), title VIII, § 846(a)(2), Sept. 29, 1988, 102 Stat. 1983, 2030, substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in item 1034 and added item 1055.

Pub. L. 100–370, § 1(c)(2)(B), July 19, 1988, 102 Stat. 841, struck out item 1052 ''Period for use of commissary stores; eligibility attributable to active duty for training''.

1987—Pub. L. 100–26, § 7(e)(1)(B), Apr. 21, 1987, 101 Stat. 281, added item 1032 and struck out second item 1051 ''Disability and death compensation: dependents of members held as captives''.

1986—Pub. L. 99–661, div. A, title VI, §§ 656(a)(2), 662(a)(2), title XIII, §§ 1322(b), 1356(a)(2), Nov. 14, 1986, 100 Stat. 3891, 3894, 3989, 3998, added item 1051 ''Bilateral or regional cooperation programs: payment of personnel expenses'' and items 1052 to 1054.

Pub. L. 99–399, title VIII, § 806(b)(2), Aug. 27, 1986, 100 Stat. 886, added item 1051 ''Disability and death compensation: dependents of members held as captives''.

1985—Pub. L. 99–145, title XIII, § 1303(a)(6), Nov. 8, 1985, 99 Stat. 739, substituted ''Atmospheric'' for ''Atomospheric'' in item 1043.

1984—Pub. L. 98–525, title VI, §§ 651(b), 654(b), title VII, § 708(a)(2), title XIV, §§ 1401(d)(2), 1405(19)(B)(ii), Oct. 19, 1984, 98 Stat. 2549, 2552, 2572, 2616, 2623, added items 1044 to 1050 and substituted ''Member'' for ''member'' in item 1034.

1983—Pub. L. 98–94, title X, § 1007(b)(2), Sept. 24, 1983, 97 Stat. 662, added item 1043.

1982—Pub. L. 97–258, § 2(b)(2)(A), Sept. 13, 1982, 96 Stat. 1052, added item 1042.

1980—Pub. L. 96–513, title V, § 511(33)(B), Dec. 12, 1980, 94 Stat. 2922, redesignated item 1040 as added by Pub. L. 90–285 as item 1041.

1977—Pub. L. 95–105, title V, § 509(d)(2), Aug. 17, 1977, 91 Stat. 860, struck out item 1032 ''Dual capacity: Reserve accepting employment with foreign government or concern''.

1968—Pub. L. 90–235, § 7(a)(2)(B), Jan. 2, 1968, 81 Stat. 763, added item 1040: ''Replacement of certificate of discharge''. Another item 1040: ''Transportation of dependent patients'', was added by Pub. L. 89–140, § 1(2), Aug. 28, 1965, 79 Stat. 579.

1966—Pub. L. 89–538, § 1(2), Aug. 14, 1966, 80 Stat. 347, substituted ''Deposits of savings'' for ''Enlisted members' deposits'' in item 1035.

1965—Pub. L. 89–140, § 1(2), Aug. 28, 1965, 79 Stat. 579, added item 1040 ''Transportation of dependent patients''.

Pub. L. 89–132, § 9(b), Aug. 21, 1965, 79 Stat. 548, added item 1040 ''Free postage from combat zone'' which was repealed by Pub. L. 89–315, § 3(b), Nov. 1, 1965, 79 Stat. 1165.

1961—Pub. L. 87–165, § 1(2), Aug. 25, 1961, 75 Stat. 401, added item 1039.

1959—Pub. L. 86–160, § 1(2), Aug. 14, 1959, 73 Stat. 358, added item 1036.

Pub. L. 86–142, § 1(2), Aug. 7, 1959, 73 Stat. 289, added item 1038.

1958—Pub. L. 85–861, § 1(24)(B), Sept. 2, 1958, 72 Stat. 1445, added item 1037.

§ 1031. Administration of oath

Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1031	10:19. 34:217a–2.	May 22, 1950, ch. 193, § 1, 64 Stat. 187.

The words ''(including the reserve component)'' are omitted, since the words ''any component of an armed force'' include the reserve components. The words ''any oath required for the enlistment or appointment of any person'' are substituted for the words ''the oath required for the enlistment of any person, the oath re-

quired for the appointment of any person to commissioned or warrant officer grade, and any other oath required by law in connection with the enlistment or appointment of any person''.

CROSS REFERENCES

Enlistment oath, who may administer, see section 502 of this title.

§1032. Disability and death compensation: dependents of members held as captives

(a) The President shall prescribe regulations under which the Secretary concerned may pay compensation for the disability or death of a dependent of a member of the uniformed services if the President determines that the disability or death—

(1) was caused by hostile action; and

(2) was a result of the relationship of the dependent to the member of the uniformed services.

(b) Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

(c) A determination by the President under subsection (a) is conclusive and is not subject to judicial review.

(d) In this section:

(1) The term ''dependent'' has the meaning given that term in section 551 of title 37.

(2) The term ''Secretary concerned'' has the meaning given that term in section 101 of that title.

(Added Pub. L. 99–399, title VIII, §806(b)(1), Aug. 27, 1986, 100 Stat. 885, §1051; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(25), Nov. 14, 1986, 100 Stat. 3994; renumbered §1032 and amended Pub. L. 100–26, §§3(8), 7(e)(1)(A), Apr. 21, 1987, 101 Stat. 274, 281; Pub. L. 101–189, div. A, title XVI, §1622(e)(2), Nov. 29, 1989, 103 Stat. 1605.)

PRIOR PROVISIONS

A prior section 1032, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, provided that a Reserve may accept civil employment with a foreign government or concern, prior to repeal by Pub. L. 95–105, title V, §509(d)(1), Aug. 17, 1977, 91 Stat. 860.

AMENDMENTS

1989—Subsec. (d)(1). Pub. L. 101–189, §1622(e)(2)(A), substituted ''The term 'dependent' has'' for ''`Dependent' has''.

Subsec. (d)(2). Pub. L. 101–189, §1622(e)(2)(B), inserted ''The term'' after ''(2)''.

1987—Pub. L. 100–26, §7(e)(1)(A), renumbered the second section 1051 of this title as this section.

Subsec. (d)(1), (2). Pub. L. 100–26, §3(8), amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99–661, §1343(a)(25), as amended by Pub. L. 100–26, §3(8), substituted ''title 37'' for ''that title'' in par. (1), and ''has the meaning given that term'' for ''and 'uniformed services' have the meanings given those terms'' in par. (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(8) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE

Section 806(b)(3) of Pub. L. 99–399 provided that: ''Section 1051 [now 1032] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any disability or death resulting from an injury that occurs after January 21, 1981.''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 4 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 1013.

[§1033. Repealed. Pub. L. 103–337, div. A, title XVI, §1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, related to Reserves continuing to accept compensation while on active duty that they were receiving prior to being ordered to active duty. See section 12601 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§1034. Protected communications; prohibition of retaliatory personnel actions

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.—(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (j));

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization; or

(iv) any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—

(1) If a member of the armed forces submits to the Inspector General of the Department of Defense (or the Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall expeditiously investigate the allegation. If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(B) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3) The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A) or (B) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate.

(e) REPORTS ON INVESTIGATIONS.—(1) Not later than 30 days after completion of an investigation under subsection (c) or (d), the Inspector General shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and the member of the armed forces who made the allegation investigated.

(2) In the copy of the report submitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 90 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described

in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(g) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(h) POST-DISPOSITION INTERVIEWS.—After disposition of any case under this section, the Inspector General shall, whenever possible, conduct an interview with the person making the allegation to determine the views of that person on the disposition of the matter.

(i) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(j) DEFINITIONS.—In this section:

(1) The term ''Member of Congress'' includes any Delegate or Resident Commissioner to Congress.

(2) The term ''Inspector General'' means—

(A) an Inspector General appointed under the Inspector General Act of 1978; and

(B) an officer of the armed forces assigned or detailed under regulations of the Secretary concerned to serve as an Inspector General at any command level in one of the armed forces.

(3) The term ''unlawful discrimination'' means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Oct. 19, 1984, Pub. L. 98–525, title XIV, § 1405(19)(A), (B)(i), 98 Stat. 2622; Sept. 29, 1988, Pub. L. 100–456, div. A, title VIII, § 846(a)(1), 102 Stat. 2027; Dec. 12, 1989, Pub. L. 101–225, title II, § 202, 103 Stat. 1910; Oct. 5, 1994, Pub. L. 103–337, div. A, title V, § 531(a)–(g)(1), 108 Stat. 2756–2758.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1034	50 App.:454(a) (last par.)	June 24, 1948, ch. 625, § 4(a) (last par.); restated June 19, 1951, ch. 144, § 1(d) (last par.), 65 Stat. 78.

The words ''prevented'', ''directly or indirectly'', ''concerning any subject'', ''or Members'', and ''and safety'' are omitted as surplusage. The word ''unlawful'' is substituted for the words ''in violation of law''.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (j)(2)(A), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1994—Pub. L. 103–337, § 531(g)(1), substituted ''Protected communications'' for ''Communicating with a Member of Congress or Inspector General'' in section catchline.

Subsec. (b). Pub. L. 103–337, § 531(a), inserted ''(1)'' before ''No person may take'', substituted ''or preparing—'' for ''or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.'', added subpars. (A) and (B), inserted ''(2)'' before ''Any action prohibited'', and substituted ''paragraph (1)'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 103–337, § 531(b)(3), substituted ''Allegations of Prohibited Personnel Actions'' for ''Certain Allegations'' in heading.

Subsec. (c)(1). Pub. L. 103–337, § 531(b)(1), inserted at end ''If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2). Pub. L. 103–337, § 531(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''A communication described in this paragraph is a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted in which the member of the armed forces makes a complaint or discloses information that the member reasonably believes constitutes evidence of—

''(A) a violation of a law or regulation; or

''(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''

Subsec. (c)(4). Pub. L. 103–337, § 531(c)(2), struck out par. (4) which read as follows: ''If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (2). The Inspector General is not required to make such an investigation if the information that the member believes evidences wrongdoing relates to actions which took place during combat.''

Subsec. (c)(5). Pub. L. 103–337, § 531(d)(1), redesignated subsec. (c)(5) as subsec. (e)(1).

Subsec. (c)(6), (7). Pub. L. 103–337, § 531(d)(4), redesignated subsec. (c)(6) and (7) as subsec. (e)(3) and (4), respectively.

Subsec. (d). Pub. L. 103–337, § 531(c)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 103–337, § 531(d)(1), redesignated subsec. (c)(5) as subsec. (e) and inserted subsec. heading and par. (1) designation before ''Not later than 30 days''. Former subsec. (e) redesignated (g).

Subsec. (e)(1). Pub. L. 103–337, § 531(d)(2), substituted ''subsection (c) or (d)'' for ''this subsection'' and ''the member of the armed forces who made the allegation investigated'' for ''the member of the armed forces concerned'' and struck out at end ''In the copy of the report submitted to the member, the Inspector General may exclude any information that would not otherwise be available to the member under section 552 of title 5.''

Subsec. (e)(2). Pub. L. 103–337, § 531(d)(3), added par. (2).

Subsec. (e)(3). Pub. L. 103–337, § 531(d)(4), (5), redesignated subsec. (c)(6) as subsec. (e)(3) and substituted ''paragraph (1)'' for ''paragraph (5)''.

Subsec. (e)(4). Pub. L. 103–337, § 531(d)(4), redesignated subsec. (c)(7) as subsec. (e)(4).

Subsec. (f). Pub. L. 103–337, § 531(c)(1), (f)(1), redesignated subsec. (d) as (f) and substituted ''subsection (e)(1)'' for ''subsection (c)(5)'' in pars. (2)(A), (3)(A)(i) and (B). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 103–337, § 531(c)(1), (f)(2), redesignated subsec. (e) as (g) and substituted ''subsection (f)'' for ''subsection (d)''. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 103–337, § 531(c)(1), redesignated subsecs. (f) and (g) as (h) and (i), respectively. Former subsec. (h) redesignated (j).

Subsec. (j). Pub. L. 103–337, § 531(c)(1), (e), redesignated subsec. (h) as (j) and added par. (3).

1989—Subsec. (c)(1). Pub. L. 101–225, § 202(1), inserted ''when the Coast Guard is not operating as a service in the Navy'' after ''Coast Guard''.

Subsec. (c)(5). Pub. L. 101–225, § 202(2), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (c)(6). Pub. L. 101–225, § 202(3), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (e). Pub. L. 101–225, § 202(4), inserted ''(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''armed forces''.

1988—Pub. L. 100–456 substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''No person may restrict any member of an armed force in communicating with a Member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.''

1984—Pub. L. 98–525 substituted ''Member'' for ''member'' in section catchline and text.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 846(d) of Pub. L. 100–456 provided that: ''The amendment to section 1034 of title 10, United States Code, made by subsection (a)(1), shall apply with respect to any personnel action taken (or threatened to be taken) on or after the date of the enactment of this Act [Sept. 29, 1988] as a reprisal prohibited by subsection (b) of that section.''

REGULATIONS

Section 531(h), (i) of Pub. L. 103–337 provided that:

''(h) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations to implement the amendments made by this section [amending this section] not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

''(i) CONTENT OF REGULATIONS.—In prescribing regulations under section 1034 of title 10, United States Code, as amended by this section, the Secretary of Defense and the Secretary of Transportation shall provide for appropriate procedural protections for the subject of any investigation carried out under the provisions of that section, including a process for appeal and review of investigative findings.''

Section 846(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense and the Secretary of Transportation shall prescribe the regulations required by subsection (g) [now (i)] of section 1034 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–190, div. A, title VIII, § 843, Dec. 5, 1991, 105 Stat. 1449, provided that:

''(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

''(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

''(c) DEADLINE.—The regulations required by this section shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON ACTIVITIES OF INSPECTOR GENERAL

Section 846(c) of Pub. L. 100–456 directed Inspector General of Department of Defense (and Inspector General of Department of Transportation with respect to Coast Guard) to submit, not later than Feb. 1, 1990, a report to Congress on activities of Inspector General under this section, with that report to include, in the case of each case handled by Inspector General under this section, a description of (A) nature of allegation described in subsec. (c) of this section; (B) evaluation and recommendation of Inspector General with respect to allegation; (C) any action of appropriate board for correction of military records with respect to allegation; (D) if allegation was determined to be meritorious, any corrective action taken; and (E) views of member or former member of armed forces making allegation (determined on basis of interview under subsec. (f) of this section) on disposition of case.

§ 1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of $5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is $10,000, except that such limitation shall not apply to deposits made on or after Septem-

ber 1, 1966, in the case of those members in a missing status during the Vietnam conflict, the Persian Gulf conflict, or a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the member entered a missing status, or September 1, 1966, whichever is later.

(f) The Secretary of Defense may authorize a member of the armed forces who is on a temporary duty assignment outside of the United States or its possessions in support of a contingency operation to make deposits of unallotted current pay and allowances during that duty as provided in subsection (a). The Secretary shall prescribe regulations establishing standards and procedures for the administration of this subsection.

(g) In this section:

(1) The term ''missing status'' has the meaning given that term in section 551(2) of title 37.

(2) The term ''Vietnam conflict'' means the period beginning on February 28, 1961, and ending on May 7, 1975.

(3) The term ''Persian Gulf conflict'' means the period beginning on January 16, 1991, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Aug. 14, 1966, Pub. L. 89–538, § 1(1), 80 Stat. 347; Nov. 3, 1967, Pub. L. 90–122, § 1, 81 Stat. 361; Feb. 26, 1970, Pub. L. 91–200, 84 Stat. 16; Oct. 19, 1984, Pub. L. 98–525, title XIV, § 1405(20), 98 Stat. 2623; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1343(a)(3), 100 Stat. 3992; Apr. 6, 1991, Pub. L. 102–25, title III, § 310, 105 Stat. 84; Dec. 5, 1991, Pub. L. 102–190, div. A, title VI, § 639, 105 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1035(a)	10:908(a) (less words after last semicolon). 34:937 (less words after last semicolon).	July 15, 1954, ch. 513, §§ 1–3, 68 Stat. 485.
1035(b)	10:908b (1st 20, and last 13, words). 34:938 (1st 20, and last 13, words).	
1035(c)	10:908a (words after last semicolon). 10:908b (less 1st 20, and last 13, words). 34:937 (words after last semicolon). 34:938 (less 1st 20, and last 13, words).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1035(d)	10:908c. 34:939.	

In subsection (a), the words ''in amounts of $5 or more'' are substituted for the words ''in sums not less than $5''. 10:908a (words before 1st semicolon of last sentence) and 34:937 (words before 1st semicolon of last sentence) are omitted as covered by subsection (c).

In subsection (b), the word ''accrues'' is substituted for the words ''shall be paid''.

In subsection (c), the words ''not less than $5'' are omitted as surplusage.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190, § 639(a), substituted '', the Persian Gulf conflict, or a contingency operation'' for ''or during the Persian Gulf conflict'' before period at end of second sentence and struck out at end ''For purposes of this subsection, the Vietnam conflict begins on February 28, 1961, and ends on May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law.''

Pub. L. 102–25, § 310(a), (c)(1), struck out '', as defined in section 551(2) of title 37,'' after ''missing status'', inserted ''or during the Persian Gulf conflict'' before period at end of second sentence, and substituted ''May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law'' for ''the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam''.

Subsec. (e). Pub. L. 102–25, § 310(c)(2), struck out ''(as defined in section 551(2) of title 37)'' after ''in a missing status''.

Subsec. (f). Pub. L. 102–190, § 639(b), added subsec. (f) and redesignated former subsec. (f) as (g).

Pub. L. 102–25, § 310(b), added subsec. (f).

Subsec. (g). Pub. L. 102–190, § 639(b)(1), (c), redesignated subsec. (f) as (g) and amended it generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'missing status' has the meaning given such term in section 551(2) of title 37.''

1986—Subsec. (a). Pub. L. 99–661 substituted ''armed forces'' for ''armed force''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''percent'' for ''per centum'', ''subsection'' for ''Act'' after ''paid under this'', and ''90'' for ''ninety''.

1970—Subsec. (b). Pub. 91–200 permitted accrual of interest on savings above $10,000 ceiling in case of soldiers involved in Vietnam conflicts who have made deposits on or after Sept. 1, 1966, and who are in missing status contemplated by section 551(2) of Title 37, and set out duration of Vietnam conflict as starting Feb. 28, 1961, and ending on the date that the President may designate by Executive order.

1967—Subsec. (e). Pub. L. 90–122 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–538 permitted not only enlisted personnel but any member of the armed forces, provided he is on permanent duty outside the United States, to participate in the savings program organized under this section and changed the fund into which such savings deposits are made.

Subsec. (b). Pub. L. 89–538 changed rate of interest from 4 per centum per annum to a rate prescribed by the President, not to exceed 10 per centum per annum, did away with the necessity that amounts be on deposit for six months or more, set a maximum of $10,000 upon which interest shall be paid, and provided for termination of interest 90 days after the member's return to the United States or its possessions.

Subsec. (c). Pub. L. 89–538 substituted provisions that, unless changed by joint regulations of the Secretaries concerned, payments of deposits and interest may not be made to the individual while stationed outside of the

United States, for provisions that payment of deposits and interest could be made only to the member upon discharge, or before discharge as prescribed by the Secretary concerned, or to the member's heirs or legal representatives.

Subsec. (d). Pub. L. 89–538 reenacted subsec. (d) substantially without change.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90–122 provided that: ''This Act [amending this section] becomes effective as of September 1, 1966.''

SAVINGS PROGRAM FOR OVERSEAS PERSONNEL

Pub. L. 101–510, div. A, title XI, § 1114, Nov. 5, 1990, 104 Stat. 1636, as amended by Pub. L. 102–25, title III, § 314(1), (3), Apr. 6, 1991, 105 Stat. 86, provided that:

''(a) ELIGIBILITY TO PARTICIPATE.—The Secretary of Defense may authorize a member of the Armed Forces who is serving outside the United States or its possessions under arduous conditions (as determined by the Secretary of Defense) pursuant to an assignment or duty detail as part of the Persian Gulf conflict to make deposits of unallotted current pay and allowances, and to earn interest, under section 1035 of title 10, United States Code.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations establishing standards and procedures for the administration of this section.''

ADJUSTMENT OF DEPOSIT ACCOUNTS OF CERTAIN ENLISTED MEN

Pub. L. 89–738, Nov. 2, 1966, 80 Stat. 1165, provided: ''That the Secretary of a military department or his designee, shall adjust the deposit account of any enlisted member or former enlisted member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who, after July 14, 1954, and before the effective date of this Act [Nov. 2, 1966], upon discharge and immediate reenlistment or retirement and immediate recall to active duty, continued, without withdrawal and redeposit, his account for deposits made under section 1035 of title 10, United States Code, or prior laws authorizing enlisted members' deposits, to show that his deposits and interest accrued thereon were withdrawn and redeposited on the date of such reenlistment or recall to active duty.

''SEC. 2. The Secretary of the military department concerned, or his designee, shall pay to a former enlisted member described in section 1 of this Act any amount found due as a result of the adjustment prescribed by that section if he submits an application within two years following the date of enactment of this Act [Nov. 2, 1966]. If the member is currently serving on active duty and has an active deposit account, the amount due him will automatically be credited to such account. In the case of a deceased member, application under this section shall be made within two years following the date of enactment of this Act [Nov. 2, 1966] by the person determined to be eligible under section 2771 of Title 10, United States Code.

''SEC. 3. All payments heretofore made which would, but for the fact of such payment, be payable under this Act are validated. However, if such a payment has been repaid to the United States, the fact of payment shall not affect entitlement under this Act.''

RATES OF INTEREST ON DEPOSITS MADE BEFORE AUG. 14, 1966

Section 2 of Pub. L. 89–538 provided that:

''(a) Notwithstanding the first section of this Act [amending this section], an amount on deposit under section 1035 of title 10, United States Code, on the date of enactment of this Act [Aug. 14, 1966], shall accrue interest at the rate and under the conditions in effect on the day before the date of enactment of this Act [Aug. 14, 1966], until the member's current enlistment terminates or earlier, as may be jointly prescribed by the Secretaries concerned. However, a member who is on a permanent duty assignment outside the United States or its possessions on the date of enactment of this Act [Aug. 14, 1966], or who reports for that duty on or after that date but before the termination of his current enlistment, will be entitled to interest on such deposit, on and after that date, at the rate and under the conditions prescribed pursuant to section 1 [amending this section]. Payments of deposits, and interest thereon, may be made to the member's heirs or legal representatives.

''(b) Any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] while a member was assigned to permanent duty within the United States and its possessions, and any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] by a member on permanent duty assignment outside the United States and its possessions which are in excess of his unallotted pay and allowances for that period, shall accrue interest at the rate in effect before enactment of this Act.''

EXTENSION OF COVERAGE TO PUBLIC HEALTH SERVICE AND COAST AND GEODETIC SURVEY PERSONNEL; RULES AND REGULATIONS

Section 3(c) of Pub. L. 89–538 provided that: ''Regulations prescribed by the Secretary of Commerce and the Secretary of Health, Education, and Welfare [now Health and Human Services] under subsections (a) and (b) [extending savings deposits benefits to commissioned officers of the Public Health Service and the Coast and Geodetic Survey (now the National Oceanic and Atmospheric Administration), respectively] shall be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of title 10, United States Code.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''the Secretary concerned'' to be exercised, with respect to the Coast and Geodetic Survey [now the commissioned officer corps of the National Oceanic and Atmospheric Administration], by the Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

EX. ORD. NO. 11298. INTEREST RATE

Ex. Ord. No. 11298, Aug. 14, 1966, 31 F.R. 10915, provided:

By virtue of the authority vested in me by Section 1035 of Title 10 of the United States Code, as amended by the Act of August 14, 1966, I hereby prescribe that amounts deposited by members of the uniformed services under that Section shall accrue interest at the rate of ten percent per annum, compounded quarterly.

This order shall be effective September 1, 1966.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 42 section 213a.

§ 1036. Escorts for dependents of members: transportation and travel allowances

Under regulations to be prescribed by the Secretary concerned, round trip transportation and travel allowances may be paid to any person for travel performed or to be performed under competent orders as an escort for dependents of a member of the armed forces, if the travel is per-

formed not later than one year after the member—

(1) dies;

(2) is missing; or

(3) is otherwise unable to accompany his dependents;

and it has been determined that travel by the dependents is necessary and that they are incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances. Such allowances may be paid in advance.

(Added Pub. L. 86–160, § 1(1), Aug. 14, 1959, 73 Stat. 358; amended Pub. L. 98–94, title IX, § 913(a), Sept. 24, 1983, 97 Stat. 640.)

AMENDMENTS

1983—Pub. L. 98–94 inserted sentence allowing the payment of allowances in advance.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 913(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1040 of this title] shall apply to travel performed by escorts or attendants of dependents on or after the date of the enactment of this Act [Sept. 24, 1983].''

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Sections 4–7 of Pub. L. 86–160 provided that:

''SEC. 4. Travel and transportation allowances paid before the effective date of this Act [Aug. 14, 1959] to persons ordered by competent authority to escort dependents of members of the uniformed services are hereby validated, if they would have been authorized under section 1 of this Act [enacting this section].

''SEC. 5. Any person who was ordered by competent authority after January 1, 1950, and before the effective date of this Act [Aug. 14, 1959] to escort dependents of members of the uniformed services and who has not been paid travel and transportation allowances, or who has repaid the United States the amount so paid to him, is entitled to be paid the amount otherwise authorized by section 1 of this Act [enacting this section], if application for such payment is made not later than one year after the effective date of this Act [Aug. 14, 1959].

''SEC. 6. The Comptroller General of the United States, or his designee, shall relieve disbursing officers, including special disbursing agents, from accountability or responsibility for any payments described in section 4 of this Act, and shall allow credits in the settlement of the accounts of those disbursing officers or agents for payments which are found to be free from fraud or collusion.

''SEC. 7. No regulations under section 1 of this Act [enacting this section] relating to the military departments shall be prescribed by the Secretary of a military department unless such regulations are first approved under procedures prescribed by the Secretary of Defense. Regulations of the Secretaries of the Treasury, Commerce, and Health, Education, and Welfare [now Health and Human Services] under section 1, 2, or 3 of this Act [enacting this section and amending section 857a of Title 33, Navigation and Navigable Waters, and section 213a of Title 42, The Public Health and Welfare] shall, to the extent practicable, agree with regulations so approved.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to Coast and Geodetic Survey [now commissioned officer corps of National Oceanic and Atmospheric Administration], by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 42 section 213a.

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice and of persons not subject to the Uniform Code of Military Justice who are employed by or accompanying the armed forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of Transportation, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

(Added Pub. L. 85–861, § 1(24)(A), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 96–513, title I, § 511(31), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 99–145, title VI, § 681(a), Nov. 8, 1985, 99 Stat. 665.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1037(a)	50:751. 50:752.	July 24, 1956, ch. 689 (less § 3), 70 Stat. 630.
1037(b)	50:754.	
1037(c)	50:755.	

In subsection (a), the words ''Under regulations to be prescribed by him'' and the last sentence are substituted for 50:752.

In subsection (b), the words ''subject to the Uniform Code of Military Justice'' are omitted as surplusage.

In subsection (c), the words ''the terms and provisions of'' are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a), is classified to chapter 47 (§ 801 et seq.) of this title.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 provided for payment of expenses for legal representation of civilians overseas.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 681(b) of Pub. L. 99–145 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to costs incurred after September 30, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Employment of attorneys or counsel by head of department, see section 3106 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3106.

§ 1038. Service credit: certain service in Women's Army Auxiliary Corps

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member.

(Added Pub. L. 86–142, § 1(1), Aug. 7, 1959, 73 Stat. 289.)

ELECTION OF PENSION OR COMPENSATION

Section 2 of Pub. L. 86–142 provided that a person entitled to a pension or compensation under any law administered by the Veterans' Administration, based on the active service described in section 1 of Pub. L. 86–142, which added section 1038 to Title 10, Armed Forces, could elect within 1 year after Aug. 7, 1959 to receive that pension or compensation in lieu of any compensation under the Federal Employees' Compensation Act; that such an election is irrevocable; and that the election does not entitle that person to the pension or compensation for any period before the date of election.

BACK PAY OR ALLOWANCES

Section 3 of Pub. L. 86–142 provided that: ''No person is entitled to back pay or allowances because of any service credited under section 1 of this Act [enacting this section].''

§ 1039. Crediting of minority service

For the purpose of determining eligibility for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, entitlement to retired or retainer pay, and years of service in computing retired or retainer pay of a member of the armed forces, any service which would be creditable but for the fact that it was performed by him under an enlistment or induction entered into before he attained the age prescribed by law for that enlistment or induction, shall be credited.

(Added Pub. L. 87–165, § 1(1), Aug. 25, 1961, 75 Stat. 401.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–165 provided that: ''Section 1 [enacting this section] applies to service performed, and retirements or transfers to the Fleet Reserve or the Fleet Marine Corps Reserve effected, before and after this Act takes effect [Aug. 25, 1961].''

§ 1040. Transportation of dependent patients

(a) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States or in Alaska or Hawaii and who is on active duty for a period of more than 30 days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, round-trip transportation and travel expenses may be furnished necessary attendants. In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance.

(b) This section does not authorize transportation and travel expenses for a dependent for elective surgery which is determined to be not medically indicated by a medical authority designated under joint regulations to be prescribed under this section.

(c) In this section, the term ''dependent'' has the meaning given that term in section 1072 of this title.

(d) Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health and Human Services, which shall require the use of transportation facilities of the United States insofar as practicable.

(Added Pub. L. 89–140, § 1(1), Aug. 28, 1965, 79 Stat. 579; amended Pub. L. 96–513, title V, § 511(32), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–94, title IX, § 913(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98–525, title VI, § 611, title XIV, § 1405(21), Oct. 19, 1984, 98 Stat. 2538, 2623; Pub. L. 99–348, title III, § 304(a)(2), July 1, 1986, 100 Stat. 703; Pub. L. 99–661, div. A, title VI, § 616(a), Nov. 14, 1986, 100 Stat. 3880.)

CODIFICATION

Another section 1040 was renumbered section 1041 of this title.

Another section 1040, related to free postage from combat zones, was added by Pub. L. 89–132, § 9(a), Aug.

21, 1965, 79 Stat. 548, prior to repeal by Pub. L. 89–315, § 3(a), Nov. 1, 1965, 79 Stat. 1164. See section 3401 et seq. of Title 39, Postal Service.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–661 substituted ''In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance'' for '', and such expenses may be paid in advance''.

Subsec. (c). Pub. L. 99–348 substituted ''In this section, the term 'dependent' has the meaning given that term in'' for '' 'Dependent' and 'uniformed services' in this section have the meanings of those terms as defined in''.

1984—Subsec. (a). Pub. L. 98–525, § 1405(21), substituted ''30'' for ''thirty''.

Pub. L. 98–525, § 611, made provisions of section applicable to a dependent accompanying a member of the uniformed services stationed in Alaska or Hawaii.

1983—Subsec. (a). Pub. L. 98–94 inserted '', and such expenses may be paid in advance'' after ''attendants''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Transportation'' and ''Secretary of Health and Human Services'' for ''Secretary of the Treasury'' and ''Secretary of Health, Education, and Welfare'', respectively.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 616(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to travel performed on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 611 of Pub. L. 98–525 provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 applicable to travel performed by escorts or attendants of dependents on or after Sept. 24, 1983, see section 913(c) of Pub. L. 98–94, set out as a note under section 1036 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1041. Replacement of certificate of discharge

If satisfactory proof is presented that a person who has discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the payment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

(Added Pub. L. 90–235, § 7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762, § 1040; renumbered § 1041, Pub. L. 96–513, title V, § 511(33)(A), Dec. 12, 1980, 94 Stat. 2922.)

§ 1042. Copy of certificate of service

A fee for a copy of a certificate showing service in the armed forces may not be charged to—

(1) a person discharged or released from the armed forces honorably or under honorable conditions;

(2) the next of kin of the person; or

(3) a legal representative of the person.

(Added Pub. L. 97–258, § 2(b)(2)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1042	31:483b.	June 19, 1956, ch. 409, 70 Stat. 297.

The words ''armed forces'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4). The words ''honorably or'' are added for consistency with 10:1040.

§ 1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service

Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active commissioned service in the armed forces for purposes of determining the retirement eligibility and computing the retired pay of a member of the armed forces.

(Added Pub. L. 98–94, title X, § 1007(b)(1), Sept. 24, 1983, 97 Stat. 662.)

§ 1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to—

(1) members of the armed forces under his jurisdiction who are on active duty;

(2) members and former members under his jurisdiction entitled to retired or retainer pay or equivalent pay; and

(3) dependents of members and former members described in clauses (1) and (2).

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the armed forces, or the dependent of a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d) The Secretary concerned shall define ''dependent'' for the purposes of this section.

(Added Pub. L. 98–525, title VI, § 651(a), Oct. 19, 1984, 98 Stat. 2549.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1044a, 1052 of this title; title 14 section 514.

§ 1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a

consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the armed forces.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates on active duty or performing inactive-duty training.

(2) All civilian attorneys serving as legal assistance officers.

(3) All adjutants, assistant adjutants, and personnel adjutants on active duty or performing inactive-duty training.

(4) All other persons on active duty or performing inactive-duty training who are designated by regulations of the armed forces or by statute to have those powers.

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(Added Pub. L. 101–510, div. A, title V, § 551(a)(1), Nov. 5, 1990, 104 Stat. 1566.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1044b, 1052 of this title; title 14 section 514.

§ 1044b. Military powers of attorney: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—A military power of attorney—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and

(2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.

(b) MILITARY POWER OF ATTORNEY.—For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.

(d) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(Added Pub. L. 103–160, div. A, title V, § 574(a), Nov. 30, 1993, 107 Stat. 1674.)

§ 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amounts withheld during any calendar quarter shall be retained by the Secretary concerned and disbursed to the States during the month following that calendar quarter.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned.

(e) In this section:

(1) The term ''State'' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) The term ''Secretary concerned'' includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned

corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98–525, title VI, §654(a), Oct. 19, 1984, 98 Stat. 2551; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation.

§1046. Overseas temporary foster care program

(a) PROGRAM AUTHORIZED.—The Secretary concerned may establish a program to provide temporary foster care services outside the United States for children accompanying members of the armed forces on duty at stations outside the United States. The foster care services provided under such a program shall be similar to those services provided by State and local governments in the United States.

(b) EXPENSES.—Under regulations prescribed by the Secretary concerned, the expenses related to providing foster care services under subsection (a) may be paid from appropriated funds available to the Secretary.

(Added Pub. L. 102–484, div. A, title VI, §651(a), Oct. 23, 1992, 106 Stat. 2425.)

PRIOR PROVISIONS

A prior section 1046, added Pub. L. 98–525, title VII, §708(a)(1), Oct. 19, 1984, 98 Stat. 2572, which related to preseparation counseling, was repealed by Pub. L. 101–510, div. A, title V, §502(b)(1), Nov. 5, 1990, 104 Stat. 1557.

§1047. Allowance for civilian clothing

The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than $40, to an enlisted member who is—

(1) discharged for misconduct or unsuitability or under conditions other than honorable;

(2) sentenced by a civil court to confinement in a prison;

(3) interned or discharged as an alien enemy; or

(4) discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.

(Added Pub. L. 98–525, title XIV, §1401(d)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8024], 98 Stat. 1904, 1928.
Dec. 8, 1983, Pub. L. 98–212, title VII, §727, 97 Stat. 1443.
Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §730], 96 Stat. 1833, 1855.
Dec. 29, 1981, Pub. L. 97–114, title VII, §730, 95 Stat. 1584.
Dec. 15, 1980, Pub. L. 96–527, title VII, §731, 94 Stat. 3086.
Dec. 21, 1979, Pub. L. 96–154, title VII, §731, 93 Stat. 1157.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §831, 92 Stat. 1249.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §830, 91 Stat. 905.
Sept. 22, 1976, Pub. L. 94–419, title VII, §730, 90 Stat. 1296.
Feb. 9, 1976, Pub. L. 94–212, title VII, §730, 90 Stat. 173.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §831, 88 Stat. 1230.
Jan. 2, 1974, Pub. L. 93–238, title VII, §732, 87 Stat. 1044.
Oct. 26, 1972, Pub. L. 92–570, title VII, §732, 86 Stat. 1201.
Dec. 18, 1971, Pub. L. 92–204, title VII, §733, 85 Stat. 733.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §833, 84 Stat. 2036.
Dec. 29, 1969, Pub. L. 91–171, title VI, §633, 83 Stat. 485.
Oct. 17, 1968, Pub. L. 90–580, title V, §532, 82 Stat. 1135.
Sept. 29, 1967, Pub. L. 90–96, title VI, §632, 81 Stat. 247.
Oct. 15, 1966, Pub. L. 89–687, title VI, §633, 80 Stat. 996.
Sept. 29, 1965, Pub. L. 89–213, title VI, §633, 79 Stat. 879.
Aug. 19, 1964, Pub. L. 88–446, title V, §533, 78 Stat. 480.
Oct. 17, 1963, Pub. L. 88–149, title V, §533, 77 Stat. 269.
Aug. 9, 1962, Pub. L. 87–577, title V, §534, 76 Stat. 333.
Aug. 17, 1961, Pub. L. 87–144, title VI, §634, 75 Stat. 381.
July 7, 1960, Pub. L. 86–601, title II, §201, 74 Stat. 340–342.
Aug. 18, 1959, Pub. L. 86–166, title II, §201, 73 Stat. 368–370.
Aug. 22, 1958, Pub. L. 85–724, title III, §301, title IV, §401, title V, §501, 72 Stat. 714, 717, 721.
Aug. 2, 1957, Pub. L. 85–117, title III, §301, title IV, §401, title V, §501, 71 Stat. 314, 316, 321.
July 2, 1956, ch. 488, title III, §301, title IV, §401, title V, §501, 70 Stat. 457, 459, 464.
July 13, 1955, ch. 358, title III, §301, title IV, §401, title V, §501, 69 Stat. 304, 306, 312.
June 30, 1954, ch. 432, title IV, §401, title V, §501, title VI, §601, 68 Stat. 339, 342, 347.
Aug. 1, 1953, ch. 305, title III, §301, title IV, §401, title V, §501, 67 Stat. 339, 342, 348.
July 10, 1952, ch. 630, title III, §301, title IV, §401, title V, §501, 66 Stat. 520, 524, 529.
Oct. 18, 1951, ch. 512, title III, §301, title IV, §401, title V, §501, 65 Stat. 429, 437, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title IV, §401, title V, §501, 64 Stat. 735, 743, 749.
Oct. 29, 1949, ch. 787, title III, §301, title IV, §401, title V, §501, 63 Stat. 993, 1006, 1014.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 557.
July 16, 1946, ch. 583, §1, 60 Stat. 548.
July 3, 1945, ch. 265, §1, 59 Stat. 391.
June 28, 1944, ch. 303, §1, 58 Stat. 580.
July 1, 1943, ch. 185, §1, 57 Stat. 354.
July 2, 1942, ch. 477, §1, 56 Stat. 617.
June 30, 1941, ch. 262, §1, 55 Stat. 373.
June 13, 1940, ch. 343, §1, 54 Stat. 359.
Apr. 26, 1939, ch. 88, §1, 53 Stat. 600.
June 11, 1938, ch. 37, §1, 52 Stat. 650.
July 1, 1937, ch. 423, §1, 50 Stat. 450.
May 15, 1936, ch. 404, §1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 129.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 622.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§1048. Gratuity payment to persons discharged for fraudulent enlistment

The Secretary concerned may pay a gratuity of not to exceed $25 to a person discharged for fraudulent enlistment.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.

Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.

Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.

Aug. 17, 1961, Pub. L. 87–144, title VI, § 607, 75 Stat. 376.

July 7, 1960, Pub. L. 86–601, title V, § 507, 74 Stat. 350.

Aug. 18, 1959, Pub. L. 86–166, title V, § 607, 73 Stat. 379.

Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 713, 722.

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 313, 321.

July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 465.

July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 313.

June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.

Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 348.

July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 530.

Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 443.

Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 750.

Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 1015.

June 24, 1948, ch. 632, 62 Stat. 653.

July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.

July 16, 1946, ch. 583, § 1, 60 Stat. 546.

July 3, 1945, ch. 265, § 1, 59 Stat. 389.

June 28, 1944, ch. 303, § 1, 58 Stat. 578.

July 1, 1943, ch. 185, § 1, 57 Stat. 352.

July 2, 1942, ch. 477, § 1, 56 Stat. 615.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1049. Subsistence: miscellaneous persons

The following persons may be provided subsistence at the expense of the United States:

(1) Enlisted members while sick in hospitals.

(2) Applicants for enlistment and selective service registrants called for induction.

(3) Prisoners.

(4) Civilian employees, as authorized by law.

(5) Supernumeraries, when necessitated by emergent military circumstances.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.

Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.

Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.

Aug. 17, 1961, Pub. L. 87–144, title II, § 201, title VI, § 607, 75 Stat. 367, 376.

July 7, 1960, Pub. L. 86–601, title II, § 201, title V, § 507, 74 Stat. 340, 350.

Aug. 18, 1959, Pub. L. 86–166, title II, § 201, title V, § 607, 73 Stat. 368, 379.

Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 713, 714, 721, 722.

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 313, 314, 321.

July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 457, 465.

July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 312.

June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.

Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 339, 348.

July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 520, 529.

Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 428, 443.

Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 734, 749, 750.

Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 991, 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 654.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 556.
July 16, 1946, ch. 583, §1, 60 Stat. 546, 547.
July 3, 1945, ch. 265, §1, 59 Stat. 389, 390.
June 28, 1944, ch. 303, §1, 58 Stat. 579.
July 1, 1943, ch. 185, §1, 57 Stat. 353.
July 2, 1942, ch. 477, §1, 56 Stat. 616.
June 30, 1941, ch. 262, §1, 55 Stat. 372.
June 13, 1940, ch. 343, §1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, §1, 53 Stat. 599.
June 11, 1938, ch. 37, §1, 52 Stat. 648.
July 1, 1937, ch. 423, §1, 50 Stat. 448.
May 15, 1936, ch. 404, §1, title I, 49 Stat. 1285.
Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 620.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1576.
July 14, 1932, ch. 482, title I, 47 Stat. 669.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 437.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 331.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1111.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 260.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 898.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§1050. Latin American cooperation: payment of personnel expenses

The Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.

(Added Pub. L. 98–525, title XIV, §1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:
Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98–212, title VII, §709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, §709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, §708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, §708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, §708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, §708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, §608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, §607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, §507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title II, §201, 75 Stat. 367, 369.
July 7, 1960, Pub. L. 86–601, title II, §201, 74 Stat. 341, 343.
Aug. 18, 1959, Pub. L. 86–166, title II, §201, 73 Stat. 369, 371.
Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, 72 Stat. 714, 721.
Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 457, 465.
July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 340, 347.
Aug. 1, 1953, ch. 305, title III, §301, title V, §501, 67 Stat. 339, 347.
July 10, 1952, ch. 630, title III, §301, title V, §501, 66 Stat. 521, 529.
Oct. 18, 1951, ch. 512, title III, §301, title V, §501, 65 Stat. 426, 442.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, 64 Stat. 732, 749.
Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 989, 1014.
June 24, 1948, ch. 632, 62 Stat. 650.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 568.
July 16, 1946, ch. 583, §1, 60 Stat. 560.
July 3, 1945, ch. 265, §1, 59 Stat. 401.
June 28, 1944, ch. 303, §1, 58 Stat. 591.
July 1, 1943, ch. 185, §1, 57 Stat. 365.
July 2, 1942, ch. 477, §1, 56 Stat. 628.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1051 of this title.

§1051. Bilateral or regional cooperation programs: payment of personnel expenses

(a) The Secretary of Defense may pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at a bilateral or regional conference, seminar, or similar meeting if the Secretary determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States.

(b)(1) Except as provided in paragraph (2), expenses authorized to be paid under subsection (a) may be paid on behalf of personnel from a developing country only in connection with travel within the area of responsibility of the unified combatant command (as such term is defined in section 161(c) of this title) in which the developing country is located or in connection with travel to Canada or Mexico.

(2) In a case in which the headquarters of a unified combatant command is located within the United States, expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the United States to attend a bilateral or regional conference, seminar, or similar meeting.

(3) Expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 of title 37 to a member of the armed forces of the United States (of a comparable grade) for authorized travel of a similar nature.

(c) In addition to the expenses authorized to be paid under subsection (a), the Secretary of Defense may pay such other expenses in connection with any such conference, seminar, or similar meeting as the Secretary considers in the national security interests of the United States.

(d) The authority to pay expenses under this section is in addition to the authority to pay certain expenses and compensation of officers and students of Latin American countries under section 1050 of this title.

(Added Pub. L. 99–661, div. A, title XIII, § 1322(a), Nov. 14, 1986, 100 Stat. 3989; amended Pub. L. 101–189, div. A, title IX, § 936, Nov. 29, 1989, 103 Stat. 1538; Pub. L. 101–510, div. A, title XIII, § 1301(5), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–484, div. A, title XIII, § 1362, Oct. 23, 1992, 106 Stat. 2560.)

CODIFICATION

Another section 1051 was renumbered section 1032 of this title.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–484 struck out subsec. (e) which read as follows: ''The authority of the Secretary of Defense under this section shall expire on September 30, 1992.''

1990—Subsecs. (e) to (g). Pub. L. 101–510 redesignated subsec. (g) as (e) and struck out former subsecs. (e) and (f) which read as follows:

''(e) Not later than March 1 each year, the Secretary of Defense shall submit to Congress a report containing—

''(1) a list of the developing countries for which expenses have been paid under this section during the preceding fiscal year; and

''(2) the amount paid by the United States in the case of each such country.

''(f) During each of fiscal years 1987, 1988, and 1989, not more than $800,000 may be obligated or expended under this section.''

1989—Subsec. (b)(1). Pub. L. 101–189, § 936(a), inserted before period at end ''or in connection with travel to Canada or Mexico''.

Subsec. (g). Pub. L. 101–189, § 936(b), substituted ''1992'' for ''1989''.

§ 1052. Reimbursement for adoption expenses

(a) AUTHORIZATION TO REIMBURSE.—The Secretary of Defense shall carry out a program under which a member of the armed forces may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member in the adoption of a child under 18 years of age.

(b) ADOPTIONS COVERED.—An adoption for which expenses may be reimbursed under this section includes an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(c) BENEFITS PAID AFTER ADOPTION IS FINAL.—Benefits paid under this section in the case of an adoption may be paid only after the adoption is final.

(d) TREATMENT OF OTHER BENEFITS.—A benefit may not be paid under this section for any expense paid to or for a member of the armed forces under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(e) LIMITATIONS.—(1) Not more than $2,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for expenses incurred in the adoption of a child.

(2) Not more than $5,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for adoptions by such member (or members) in any calendar year.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) The term ''qualifying adoption expenses'' means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a State or local government agency which has responsibility under State or local law for child placement through adoption or by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption. Such term does not include any expense incurred—

(A) by an adopting parent for travel; or

(B) in connection with an adoption arranged in violation of Federal, State, or local law.

(2) The term ''reasonable and necessary expenses'' includes—

(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

(B) placement fees, including fees charged adoptive parents for counseling;

(C) legal fees (including court costs) in connection with services that are unavailable to a member of the armed forces under section 1044 or 1044a of this title; and

(D) medical expenses, including hospital expenses of the biological mother of the child to be adopted and of a newborn infant to be adopted.

(Added Pub. L. 102–190, div. A, title VI, § 651(a)(1), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 102–484, div. A, title X, § 1052(12), Oct. 23, 1992, 106 Stat. 2499.)

PRIOR PROVISIONS

A prior section 1052 was renumbered section 1063 of this title.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–484 inserted close parenthesis before period at end.

EFFECTIVE DATE

Section 651(c) of Pub. L. 102–190 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and section 514 of Title 14, Coast Guard] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to adoptions completed on or after that date.''

REIMBURSEMENT FOR ADOPTIONS COMPLETED DURING PERIOD BETWEEN TEST AND PERMANENT PROGRAM

Section 652 of Pub. L. 102–484 provided that:

''(a) REIMBURSEMENT OF ADOPTION EXPENSES.—Section 1052 of title 10, United States Code, and section 514 of title 14, United States Code, shall apply with respect to the reimbursement of adoption expenses incurred for an adoption proceeding completed during the period beginning on October 1, 1990, and ending on December 4, 1991, to the extent the adoption expenses would be covered by one of these sections if the adoption proceeding had been completed after December 4, 1991.

''(b) TIME PERIOD FOR APPLICATION.—Subsection (a) shall apply to a person covered by such subsection only if the person applies to the Secretary of Defense or the Secretary of Transportation for the reimbursement of adoption expenses under section 1052 of title 10, United States Code, or section 514 of title 14, United States Code, whichever applies, within one year after the date of the enactment of this Act [Oct. 23, 1992].''

§1053. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay

(a)(1) A member of the armed forces (or a former member of the armed forces entitled to retired pay under chapter 67[1] of this title) who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed by the Secretary concerned for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance or average balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the person concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay and allowances of members of the armed force concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' has the meaning given the term ''financial organization'' in section 3332(a) of title 31.

(2) The term ''pay'' includes (A) retired pay, and (B) allowances.

(Added Pub. L. 99–661, div. A, title VI, §662(a)(1), Nov. 14, 1986, 100 Stat. 3893; amended Pub. L. 101–189, div. A, title VI, §664(a)(1)–(3)(A), Nov. 29, 1989, 103 Stat. 1466; Pub. L. 102–25, title VII, §701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115.)

REFERENCES IN TEXT

Chapter 67 of this title, referred to in subsec. (a)(1), was transferred to part II of subtitle E of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

AMENDMENTS

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1989—Pub. L. 101–189, §664(a)(3)(A), amended section catchline generally, substituting ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of''.

Subsec. (a). Pub. L. 101–189, §664(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A member of the armed forces who, by law or regulation, is required to participate in a program for the automatic deposit of pay to a financial institution may be reimbursed for overdraft charges levied by the financial institution when such charges result from an administrative or mechanical error on the part of the Government that causes such member's pay to be deposited late or in an incorrect amount or manner.''

Subsec. (d). Pub. L. 101–189, §664(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'financial institution' has the meaning given that term in section 3332 of title 31.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 664(c) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section], and section 1594 of title 10, United States Code, as added by subsection (b), shall apply with respect to pay and allowances deposited (or scheduled to be deposited) on or after the first day of the first month beginning after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE

Section 662(c) of Pub. L. 99–661 provided that: ''Section 1053 of title 10, United States Code, as added by subsection (a), shall apply only with respect to charges levied as a result of errors occurring on or after the date of the enactment of this Act [Nov. 14, 1986].''

§1054. Defense of certain suits arising out of legal malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

[1] See References in Text note below.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term ''head of the agency concerned'' means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

(Added Pub. L. 99–661, div. A, title XIII, § 1356(a)(1), Nov. 14, 1986, 100 Stat. 3996; amended Pub. L. 100–448, § 15(a), Sept. 28, 1988, 102 Stat. 1845.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–448, § 15(a)(1), inserted ''or within the Coast Guard'' after ''of title 32)''.

Subsec. (g). Pub. L. 100–448, § 15(a)(2), inserted reference to the Secretary of the department in which the Coast Guard is operating.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 15(b) of Pub. L. 100–448 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 28, 1988], regardless of when the alleged negligent act or omission occurred.''

EFFECTIVE DATE

Section 1356(b) of Pub. L. 99–661 provided that: ''Section 1054 of title 10, United States Code, as added by subsection (a), shall apply only to claims accruing on or after the date of the enactment of this Act [Nov. 14, 1986], regardless of when the alleged negligent or wrongful act or omission occurred.''

§ 1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord

(a) The Secretary of Defense may carry out a program under which the Secretary of a military department agrees to indemnify a landlord who leases a rental unit to a member of the armed forces against a breach of the lease by the member or for damage to the rental unit caused by the member. In exchange for agreement for such indemnification by the Secretary, the landlord shall be required to waive any requirement for payment by the member of a security deposit that the landlord would otherwise require.

(b)(1) For purposes of carrying out a program authorized by subsection (a), the Secretary of a military department, to the extent funds are provided in advance in appropriation Acts, may enter into an agreement with any landlord who agrees to waive the requirement for a security deposit in connection with the lease of a rental unit to a member of the armed forces under the jurisdiction of the Secretary. An agreement under this paragraph shall provide that—

(A) the term of the agreement shall remain in effect during the term of the member's lease and during any lease renewal periods with the lessor;

(B) the member shall not pay a security deposit;

(C) the Secretary (except as provided in subparagraphs (D) and (E)) shall compensate the landlord for breach of the lease by the member and for damage to the rental unit caused by the member or by a guest or dependent of the member;

(D) the total liability of the Secretary for a breach of the lease or for damage described in subparagraph (C) may not exceed an amount equal to the amount that the Secretary determines would have been required by the landlord as a security deposit in the absence of an agreement authorized in this paragraph;

(E) the Secretary may not compensate the landlord for any claim for breach of the lease or for damage described in subparagraph (C) until the landlord exhausts any remedies available to the landlord (including submission to binding arbitration by a panel composed of military personnel and persons from the private sector) against the member for the breach or damage; and

(F) the Secretary shall be subrogated to the rights of the landlord in any case in which the Secretary compensates the landlord for breach of the lease or for damage described in subparagraph (C).

(2) Any authority of the Secretary of a military department under this section shall be exercised under regulations prescribed by the Secretary of Defense.

(c)(1) The Secretary of a military department who compensates a landlord under subsection (b) for a breach of a lease or for damage described in subsection (b)(1)(C) may issue a special order under section 1007 of title 37 to authorize the

withholding from the pay of the member of an amount equal to the amount paid by the Secretary to the landlord as compensation for the breach or damage.

(2) Before the Secretary of a military department issues a special order under section 1007 of title 37 to authorize the withholding of any amount from the pay of a member for a breach or damage referred to in paragraph (1), the Secretary concerned shall provide the member with the same notice and opportunity for hearing and record inspection as provided an individual under section 5514(a)(2) of title 5. The Secretary concerned shall prescribe regulations, subject to the approval of the President, to carry out this paragraph. Such regulations shall be as uniform for the military departments as practicable.

(d) In this section, the term ''landlord'' means a person who leases a rental unit to a member of the armed forces.

(Added Pub. L. 100–456, div. A, title VI, §621(a)(1), Sept. 29, 1988, 102 Stat. 1982.)

EFFECTIVE DATE

Section 621(b) of Pub. L. 100–456 provided that: ''Section 1055 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1988.''

§1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance, through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.

(2) The Secretary shall ensure that, not later than September 30, 1991, information available through each military relocation assistance program shall be managed through a computerized information system that can interact with all other military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) Duties of each military relocation assistance program shall include assisting personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) DIRECTOR.—The Secretary of Defense shall establish the position of Director of Military Relocation Assistance Programs in the office of the Assistant Secretary of Defense (Force Management and Personnel). The Director shall oversee development and implementation of the military relocation assistance programs under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense, acting through the Director of Military Relocation Assistance Programs, shall submit to Congress a report on the program under this section and on military family relocation matters. The report shall include the following:

(1) An assessment of available, affordable private-sector housing for members of the armed forces and their families.

(2) An assessment of the actual nonreimbursed costs incurred by members of the armed forces and their families who are ordered to make a change of permanent station.

(3) Information (shown by military installation) on the types of locations at which members of the armed forces assigned to duty at military installations live, including the number of members of the armed forces who live on a military installation and the number who do not live on a military installation.

(4) Information on the effects of the relocation assistance programs established under this section on the quality of life of members of the armed forces and their families and on retention and productivity of members of the armed forces.

(g) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(c)(1), Nov. 5, 1990, 104 Stat. 1705.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–189, div. A, title VI, § 661(a)–(g), Nov. 29, 1989, 103 Stat. 1463, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–510, § 1481(c)(3).

IMPLEMENTATION OF RELOCATION ASSISTANCE PROGRAMS

Section 1481(c)(4) of Pub. L. 101–510 provided that: ''The program required to be carried out by section 1056 of title 10, United States Code, as added by paragraph (1), shall be established by the Secretary of Defense not later than October 1, 1990. The Secretary shall prescribe regulations to implement that section not later than July 1, 1990.''

§ 1057. Use of armed forces insignia on State license plates

(a) The Secretary concerned may approve an application by a State to use or imitate the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on motor vehicle license plates issued by the State to an individual who is a member or former member of the armed forces.

(b) The Secretary concerned may prescribe any regulations necessary regarding the display of the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on the license plates described in subsection (a).

(c) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 102–484, div. A, title X, § 1080(a), Oct. 23, 1992, 106 Stat. 2514.)

§ 1058. Responsibilities of military law enforcement officials at scenes of domestic violence

(a) IMMEDIATE ACTIONS REQUIRED.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure, in any case of domestic violence in which a military law enforcement official at the scene determines that physical injury has been inflicted or a deadly weapon or dangerous instrument has been used, that military law enforcement officials—

(1) take immediate measures to reduce the potential for further violence at the scene; and

(2) within 24 hours of the incident, provide a report of the domestic violence to the appropriate commander and to a local military family advocacy representative exercising responsibility over the area in which the incident took place.

(b) FAMILY ADVOCACY COMMITTEE.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure that, whenever a report is provided to a commander under subsection (a)(2), a multidisciplinary family advocacy committee meets, with all due practicable speed, to review the situation and to make recommendations to the commander for appropriate action.

(c) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe by regulation the definition of ''domestic violence'' for purposes of this section and such other regulations as may be necessary for purposes of this section.

(d) MILITARY LAW ENFORCEMENT OFFICIAL.—In this section, the term ''military law enforcement official'' means a person authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (chapter 47 of this title) or to trial thereunder.

(Added Pub. L. 103–160, div. A, title V, § 551(a)(1), Nov. 30, 1993, 107 Stat. 1661; amended Pub. L. 103–337, div. A, title X, § 1070(a)(4), (b)(3), Oct. 5, 1994, 108 Stat. 2855, 2856.)

CODIFICATION

Other sections 1058 were renumbered sections 1059 and 1060 of this title.

AMENDMENTS

1994—Pub. L. 103–337, § 1070(b)(3), made technical correction to directory language of Pub. L. 103–160, § 551(a)(1), which enacted this section.

Subsec. (d). Pub. L. 103–337, § 1070(a)(4), substituted ''subject to the Uniform Code of Military Justice (chapter 47 of this title)'' for ''subject to this chapter''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

DEADLINE FOR PRESCRIBING PROCEDURES

Section 551(b) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall prescribe procedures to carry out section 1058 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

(a) AUTHORITY TO PAY COMPENSATION.—The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary of Transportation, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b).

(b) PUNITIVE AND OTHER ADVERSE ACTIONS COVERED.—This section applies in the case of a member of the armed forces on active duty for a period of more than 30 days—

(1) who is convicted of a dependent-abuse offense (as defined in subsection (c)) and whose conviction results in the member—

(A) being separated from active duty pursuant to a sentence of a court-martial; or

(B) forfeiting all pay and allowances pursuant to a sentence of a court-martial; or

(2) who is administratively separated from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

(c) DEPENDENT-ABUSE OFFENSES.—For purposes of this section, a dependent-abuse offense is conduct by an individual while a member of the armed forces on active duty for a period of more than 30 days—

(1) that involves abuse of the spouse or a dependent child of the member; and

(2) that is a criminal offense specified in regulations prescribed by the Secretary of Defense under subsection (j).[1]

(d) RECIPIENTS OF PAYMENTS.—In any case of a separation from active duty as described in subsection (b), the Secretary shall pay such compensation to dependents or former dependents of the former member as follows:

(1) If the former member was married at the time of the commission of the dependent-abuse offense resulting in the separation, such compensation shall (except as otherwise provided in this subsection) be paid to the spouse or former spouse to whom the member was married at that time.

(2) If there is a spouse or former spouse who (but for subsection (g)) would be eligible for compensation under this section and if there is a dependent child of the former member who does not reside in the same household as that spouse or former spouse, such compensation shall be paid to each such dependent child of the former member who does not reside in that household.

(3) If there is no spouse or former spouse who is (or but for subsection (g) would be) eligible under paragraph (1), such compensation shall be paid to the dependent children of the former member.

(4) For purposes of paragraphs (2) and (3), an individual's status as a ''dependent child'' shall be determined as of the date on which the member is convicted of the dependent-abuse offense or, in a case described in subsection (b)(2), as of the date on which the member is separated from active duty.

(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section—

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and

(B) in the case of a member being considered under applicable regulations for administrative separation from active duty in accordance with such regulations (if the basis for the separation includes a dependent-abuse offense), shall commence as of the date on which the separation action is initiated by a commander of the member pursuant to such regulations, as determined by the Secretary concerned.

(2) Transitional compensation with respect to a member shall be paid for a period of 36 months, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

(A) the unserved portion of the member's period of obligated active duty service; or

(B) 12 months.

(3)(A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction by a court-martial for a dependent-abuse offense and each such punishment applicable to the member under the sentence is remitted, set aside, or mitigated to a lesser punishment that does not include any such punishment, any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

(B) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is disapproved by competent authority under applicable regulations, payment of transitional compensation in such case shall cease.

(C) Cessation of payments under subparagraph (A) or (B) shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that payment of the transitional compensation will cease. The recipient may not be required to repay amounts of transitional compensation received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(f) AMOUNT OF PAYMENT.—(1) Payment to a spouse or former spouse under this section for any month shall be at the rate in effect for that month for the payment of dependency and indemnity compensation under section 1311(a)(1) of title 38.

(2) If a spouse or former spouse to whom compensation is paid under this section has custody of a dependent child or children of the member, the amount of such compensation paid for any month shall be increased for each such dependent child by the amount in effect for that month under section 1311(b) of title 38.

(3) If compensation is paid under this section to a child or children pursuant to subsection (d)(2) or (d)(3), such compensation shall be paid in equal shares, with the amount of such compensation for any month determined in accordance with the rates in effect for that month under section 1313 of title 38.

(g) SPOUSE AND FORMER SPOUSE FORFEITURE PROVISIONS.—(1) If a former spouse receiving compensation under this section remarries, the

[1] So in original. Probably should be subsection ''(k)''.

Secretary shall terminate payment of such compensation, effective as of the date of such marriage. The Secretary may not renew payment of compensation under this section to such former spouse in the event of the termination of such subsequent marriage.

(2) If after a punitive or other adverse action is executed in the case of a former member as described in subsection (b) the former member resides in the same household as the spouse or former spouse, or dependent child, to whom compensation is otherwise payable under this section, the Secretary shall terminate payment of such compensation, effective as of the time the former member begins residing in such household. Compensation paid for a period after the former member's separation, but before the former member resides in the household, shall not be recouped. If the former member subsequently ceases to reside in such household before the end of the period of eligibility for such payments, the Secretary may not resume such payments.

(3) In a case in which the victim of the dependent-abuse offense resulting in a punitive or other adverse action described in subsection (b) was a dependent child, the Secretary concerned may not pay compensation under this section to a spouse or former spouse who would otherwise be eligible to receive such compensation if the Secretary determines (under regulations prescribed under subsection (j))[2] that the spouse or former spouse was an active participant in the conduct constituting the dependent-abuse offense.

(h) EFFECT OF CONTINUATION OF MILITARY PAY.—In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order—

(1) suspends, in whole or in part, that part of a sentence that includes forfeiture of the member's pay and allowance; or

(2) otherwise results in continuation, in whole or in part, of the member's pay and allowances.

(i) COORDINATION OF BENEFITS.—The Secretary concerned may not make payments to a spouse or former spouse under both this section and section 1408(h)(1) of this title. In the case of a spouse or former spouse for whom a court order provides for payments by the Secretary pursuant to section 1408(h)(1) of this title and to whom the Secretary offers payments under this section, the spouse or former spouse shall elect which to receive.

(j) COMMISSARY AND EXCHANGE BENEFITS.—(1) A dependent or former dependent entitled to payment of monthly transitional compensation under this section shall, while receiving payments in accordance with this section, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the armed forces on active duty for a period of more than 30 days.

(2) If a dependent or former dependent eligible or entitled to use commissary and exchange stores under paragraph (1) is eligible or entitled to use commissary and exchange stores under another provision of law, the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under such other provision of law rather than under paragraph (1).

(k) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy). The Secretary of Transportation shall prescribe regulations to carry out this section with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations prescribed under paragraph (1) shall include the criminal offenses, or categories of offenses, under the Uniform Code of Military Justice (chapter 47 of this title), Federal criminal law, the criminal laws of the States and other jurisdictions of the United States, and the laws of other nations that are to be considered to be dependent-abuse offenses for the purposes of this section.

(*l*) DEPENDENT CHILD DEFINED.—In this section, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in subsection (b), means an unmarried child, including an adopted child or a stepchild, who was residing with the member at the time of the dependent-abuse offense resulting in the separation of the former member and—

(1) who is under 18 years of age;

(2) who is 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support; or

(3) who is 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support.

(Added Pub. L. 103–160, div. A, title V, § 554(a)(1), Nov. 30, 1993, 107 Stat. 1663, § 1058; renumbered § 1059 and amended Pub. L. 103–337, div. A, title V, § 535(a)–(c)(1), title X, § 1070(a)(5)(A), Oct. 5, 1994, 108 Stat. 2762, 2763, 2855.)

AMENDMENTS

1994—Pub. L. 103–337, § 1070(a)(5)(A), renumbered section 1058 of this title as this section.

Pub. L. 103–337, § 535(c)(1), inserted ''; commissary and exchange benefits'' at end of section catchline.

Subsec. (e). Pub. L. 103–337, § 535(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section shall commence as of the date of the discontinuance of the member's pay and allowances pursuant to the separation or sentencing of the member and, except as provided in paragraph (2), shall be paid for a period of 36 months.

[2] So in original. Probably should be subsection ''(k)''.

''(2) If as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

''(A) the unserved portion of the member's period of obligated active duty service; or

''(B) 12 months.''

Subsecs. (j) to (*l*). Pub. L. 103–337, §535(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

EFFECTIVE DATE

Section 554(b) of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(5), Oct. 5, 1994, 108 Stat. 2856, provided that:

''(1) The section of title 10, United States Code, added by subsection (a)(1) [this section] shall apply with respect to a member of the Armed Forces who, on or after the date of the enactment of this Act [Nov. 30, 1993]—

''(A) is separated from active duty as described in subsection (b) of such section; or

''(B) forfeits all pay and allowances as described in such subsection.

''(2) Notwithstanding paragraph (1), no payment may be made under such section with respect to any period before April 1, 1994.''

§1060. Military service of retired members with newly democratic nations: consent of Congress

(a) CONSENT OF CONGRESS.—Subject to subsection (b), Congress consents to a retired member of the uniformed services—

(1) accepting employment by, or holding an office or position in, the military forces of a newly democratic nation; and

(2) accepting compensation associated with such employment, office, or position.

(b) APPROVAL REQUIRED.—The consent provided in subsection (a) for a retired member of the uniformed services to accept employment or hold an office or position shall apply to a retired member only if the Secretary concerned and the Secretary of State jointly approve the employment or the holding of such office or position.

(c) DETERMINATION OF NEWLY DEMOCRATIC NATIONS.—The Secretary concerned and the Secretary of State shall jointly determine whether a nation is a newly democratic nation for the purposes of this section.

(d) REPORTS TO CONGRESSIONAL COMMITTEES.—The Secretary concerned and the Secretary of State shall notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives of each approval under subsection (b) and each determination under subsection (c).

(e) CONTINUED ENTITLEMENT TO RETIRED PAY AND BENEFITS.—The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of such retired member to receive benefits on the basis of such retired member's status as a retired member of the uniformed services, may not be terminated by reason of employment or holding of an office or position consented to in subsection (a).

(f) RETIRED MEMBER DEFINED.—In this section, the term ''retired member'' means a member or former member of the uniformed services who is entitled to receive retired or retainer pay.

(g) CIVIL EMPLOYMENT BY FOREIGN GOVERNMENTS.—For a provision of law providing the consent of Congress to civil employment by foreign governments, see section 908 of title 37.

(Added Pub. L. 103–160, div. A, title XIV, §1433(b)(1), Nov. 30, 1993, 107 Stat. 1834, §1058; renumbered §1060, Pub. L. 103–337, div. A, title X, §1070(a)(6)(A), Oct. 5, 1994, 108 Stat. 2855.)

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1058 of this title as this section.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section 1433(d) of Pub. L. 103–160 provided that this section was to take effect as of Jan. 1, 1993, prior to repeal by Pub. L. 103–236, title I, §182(b), Apr. 30, 1994, 108 Stat. 418.

RESTORATION OF WITHHELD BENEFITS

Pub. L. 103–236, title I, §182(a), Apr. 30, 1994, 108 Stat. 418, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(7), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 103–415, §1(j), Oct. 25, 1994, 108 Stat. 4301, provided that: ''With respect to any person for which the Secretary of State and the Secretary concerned within the Department of Defense have approved the employment or the holding of a position pursuant to the provisions of section 1060 of title 10, United States Code, before April 30, 1994, the consents, approvals and determinations under that section shall be deemed to be effective as of January 1, 1993.''

CONGRESSIONAL FINDINGS

Section 1433(a) of Pub. L. 103–160 provided that: ''The Congress makes the following findings:

''(1) It is in the national security interest of the United States to promote democracy throughout the world.

''(2) The armed forces of newly democratic nations often lack the democratic traditions that are a hallmark of the Armed Forces of the United States.

''(3) The understanding of military roles and missions in a democracy is essential for the development and preservation of democratic forms of government.

''(4) The service of retired members of the Armed Forces of the United States in the armed forces of newly democratic nations could lead to a better understanding of military roles and missions in a democracy.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 908.

§1060a. Special supplemental food program

(a) AUTHORITY.—The Secretary of Defense may carry out a program to provide special supplemental food benefits to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by,

or accompanying the armed forces outside the United States (and its territories and possessions).

(b) FEDERAL PAYMENTS AND COMMODITIES.—For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense from funds appropriated for such purpose, the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(c) PROGRAM ADMINISTRATION.—(1)(A) The Secretary of Defense shall administer the program referred to in subsection (a) and, except as provided in subparagraph (B), shall determine eligibility for program benefits under the criterion published by the Secretary of Agriculture under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(B) The Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of individuals participating in the program under this section.

(2) The program benefits provided under the program shall be similar to benefits provided by State and local agencies in the United States.

(d) DEPARTURE FROM STANDARDS.—The Secretary of Defense may authorize departures from standards prescribed by the Secretary of Agriculture regarding the supplemental foods to be made available in the program when local conditions preclude strict compliance or when such compliance is highly impracticable.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to administer the program authorized by this section.

(f) DEFINITIONS.—In this section:

(1) The term ''eligible civilian'' means—

(A) a dependent of a member of the armed forces residing with the member outside the United States;

(B) an employee of a military department who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States; or

(C) an employee of a Department of Defense contractor who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States.

(2) The term ''national of the United States'' means—

(A) a citizen of the United States; or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))).

(3) The term ''dependent'' has the meaning given such term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title.

(Added Pub. L. 103–337, div. A, title VI, § 653(a), Oct. 5, 1994, 108 Stat. 2794.)

CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

Sec.
1061. Survivors of certain Reserve and Guard members.
1062. Certain former spouses.
1063. Period for use of commissary stores: eligibility for members of the Ready Reserve.
1064. Use of commissary stores by certain members and former members.
1065. Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title III, § 365(c)(2), Oct. 23, 1992, 106 Stat. 2382, substituted ''eligibility for members of the Ready Reserve'' for ''eligibility attributable to active duty for training''.

1990—Pub. L. 101–510, div. A, title III, § 321(d), Nov. 5, 1990, 104 Stat. 1528, added items 1064 and 1065.

§ 1061. Survivors of certain Reserve and Guard members

(a) BENEFITS.—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

(b) COVERED DEPENDENTS.—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

(1) while on active duty, active duty for training, or inactive-duty training (regardless of the period of such duty); or

(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, active duty for training, or inactive-duty training (regardless of the period of such duty).

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–145, title III, § 308, Nov. 8, 1985, 99 Stat. 618.

§ 1062. Certain former spouses

The Secretary of Defense shall prescribe such regulations as may be necessary to provide that an unremarried former spouse described in subparagraph (F)(i) of section 1072(2) of this title is entitled to commissary and exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services.

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 97–252, title X, § 1005, Sept. 8, 1982, 96 Stat. 737.

§ 1063. Period for use of commissary stores: eligibility for members of the Ready Reserve

(a) ELIGIBILITY OF MEMBERS OF READY RESERVE.—(1) A member of the Ready Reserve who satisfactorily completes 50 or more points creditable under section 1332(a)(2)[1] of this title in a

[1] See References in Text note below.

calendar year shall be eligible to use commissary stores of the Department of Defense. The Secretary concerned shall authorize the member to have 12 days of eligibility for any calendar year that the member qualifies for eligibility under this subsection.

(2) Paragraph (1) shall apply without regard to whether, during the calendar year, the member receives compensation for the duty or training performed by the member or performs active duty for training.

(b) LIMITATION.—A member may not use commissary stores by reason of this section for more than 14 days in any period of 365 days.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations, subject to the approval of the Secretary of Defense, to carry out this section.

(Added Pub. L. 99–661, div. A, title VI, §656(a)(1), Nov. 14, 1986, 100 Stat. 3891, §1052; renumbered §1063, Pub. L. 100–370, §1(c)(2)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 101–510, div. A, title III, §321(a)(1), Nov. 5, 1990, 104 Stat. 1527; Pub. L. 102–484, div. A, title III, §365(a), (c)(1), Oct. 23, 1992, 106 Stat. 2382.)

REFERENCES IN TEXT

Section 1332 of this title, referred to in subsec. (a)(1), was renumbered section 12732 of this title and amended generally by Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3000. As so renumbered and amended the provisions of section 1332(a)(2) are now contained in section 12732(a)(2) of this title.

AMENDMENTS

1992—Pub. L. 102–484, §365(c)(1), substituted ''eligibility for members of the Ready Reserve'' for ''eligibility attributable to active duty for training'' in section catchline.

Subsec. (a). Pub. L. 102–484, §365(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''ELIGIBILITY OF MEMBERS OF READY RESERVE.—A member of the Ready Reserve who performs active duty for training (or annual training without compensation equivalent to active duty for training) shall accrue eligibility to use commissary stores of the Department of Defense for each day of that training. The Secretary concerned shall authorize the member to have one day of eligibility for using commissary stores, up to 12 days each calendar year, for the performance of that duty.''

1990—Subsec. (a). Pub. L. 101–510 substituted ''Eligibility of members of Ready Reserve'' for ''Period for use of eligibility'' in heading and amended text generally. Prior to amendment, text read as follows: ''If under regulations establishing eligibility for use of commissary stores, a member of the armed forces accrues eligibility to use commissary stores of the Department of Defense by reason of the performance of active duty for training, the Secretary concerned shall authorize the member to have one year from the date on which the member performs active duty for training to use a day of eligibility for using commissary stores attributable to the performance of that duty.''

1988—Pub. L. 100–370 renumbered section 1052 of this title as this section.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 365(b) of Pub. L. 102–484 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the completion of reserve points beginning in calendar year 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 321(a)(2) of Pub. L. 101–510 provided that: ''Section 1063(a) of title 10, United States Code (as amended by subsection (a)), shall apply with respect to active duty for training or annual training performed by a member of the Ready Reserve after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE

Section 656(c) of Pub. L. 99–661 provided that: ''Section 1052 [now 1063] of title 10, United States Code, as added by the amendments made by subsection (a), and the repeal made by subsection (b) [repealing section 1013 of Pub. L. 98–94], shall apply only with respect to active duty for training performed on or after the date of the enactment of this Act [Nov. 14, 1986].''

COMMISSARY AND EXCHANGE PRIVILEGES FOR SURVIVORS OF CERTAIN RESERVISTS

Pub. L. 99–145, title III, §308, Nov. 8, 1985, 99 Stat. 618, which required the Secretary of Defense to prescribe regulations to allow dependents of certain deceased members of the uniformed services to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days, was repealed and restated in section 1061 of this title by Pub. L. 100–370, §1(c)(1), (4), July 19, 1988, 102 Stat. 841.

§1064. Use of commissary stores by certain members and former members

Under regulations prescribed by the Secretary of Defense, a person who would be eligible for retired pay under chapter 67[1] of this title but for the fact that the person is under 60 years of age shall be authorized to use commissary stores of the Department of Defense for 12 days each calendar year.

(Added Pub. L. 101–510, div. A, title III, §321(b), Nov. 5, 1990, 104 Stat. 1528.)

REFERENCES IN TEXT

Chapter 67 of this title, referred to in text, was transferred to part II of subtitle E of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

EFFECTIVE DATE

Section 321(e)(1) of Pub. L. 101–510 provided that: ''The amendments made by subsections (b) and (c) [enacting this section and section 1065 of this title] shall take effect 120 days after the date of the enactment of this Act [Nov. 5, 1990].''

REGULATIONS

Section 321(e)(2) of Pub. L. 101–510 provided that: ''The Secretary of Defense shall prescribe such regulations as may be necessary for the proper administration of sections 1064 and 1065 of title 10, United States Code, as added by this section, not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

§1065. Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents

(a) UNRESTRICTED USE REQUIRED.—Members of the Selected Reserve in good standing (as determined by the Secretary concerned) and members who would be eligible for retired pay under chapter 67[1] of this title but for the fact that the member is under 60 years of age, and the depend-

[1] See References in Text note below.

[1] See References in Text note below.

ents of such members, shall be permitted to use the exchange stores and other revenue generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces. Such use shall be permitted on the same basis as members on active duty.

(b) ELIGIBILITY TO USE AUTHORIZED.—Subject to such regulations as the Secretary of Defense may prescribe, members of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use the facilities referred to in subsection (a) on the same basis as members serving on active duty.

(Added Pub. L. 101–510, div. A, title III, § 321(c), Nov. 5, 1990, 104 Stat. 1528.)

REFERENCES IN TEXT

Chapter 67 of this title, referred to in subsec. (a), was transferred to part II of subtitle E of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§ 1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

EFFECTIVE DATE

Section effective 120 days after Nov. 5, 1990, see section 321(e)(1) of Pub. L. 101–510, set out as a note under section 1064 of this title.

REGULATIONS

For authority of Secretary of Defense to prescribe regulations necessary for proper administration of section, see section 321(e)(2) of Pub. L. 101–510, set out as a note under section 1064 of this title.

CHAPTER 55—MEDICAL AND DENTAL CARE

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AMENDMENTS

1993—Pub. L. 103–160, div. A, title VII, §§ 701(a)(2), 712(a)(2), 714(b)(2), 716(a)(2), Nov. 30, 1993, 107 Stat. 1686, 1689, 1690, 1692, added item 1074d, substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in item 1091 and ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' in item 1101, added item 1105, and struck out former item 1105 ''Issuance of nonavailability of health care statements''.

1992—Pub. L. 102–484, div. D, title XLIV, § 4408(a)(2), Oct. 23, 1992, 106 Stat. 2712, added item 1078a.

1991—Pub. L. 102–190, div. A, title VI, § 640(b), title VII, §§ 715(b), 716(a)(2), Dec. 5, 1991, 105 Stat. 1385, 1403, 1404, added item 1074b, redesignated former item 1074b as 1074c, and added items 1105 and 1106.

1990—Pub. L. 101–510, div. A, title VII, § 713(d)(2)[(3)], Nov. 5, 1990, 104 Stat. 1584, substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in item 1095.

1989—Pub. L. 101–189, div. A, title VII, §§ 722(b), 731(b)(2), Nov. 29, 1989, 103 Stat. 1478, 1482, added items 1086a and 1104.

1987—Pub. L. 100–180, div. A, title VII, § 725(a)(2), Dec. 4, 1987, 101 Stat. 1116, added item 1103.

Pub. L. 100–26, § 7(e)(2), Apr. 21, 1987, 101 Stat. 281, redesignated item 1095 ''Medical care: members held as captives and their dependents'' as item 1095a.

1986—Pub. L. 99–661, div. A, title VI, § 604(a)(2), title VII, §§ 701(a)(2), 705(a)(2), Nov. 14, 1986, 100 Stat. 3875,

3897, 3904 substituted ''active duty for a period of more than 30 days'' for ''active duty; injuries, diseases, and illnesses incident to duty'' in item 1074a and added items 1096 to 1102.

Pub. L. 99–399, title VIII, § 801(c)(2), Aug. 27, 1986, 100 Stat. 886, added item 1095 ''Medical care: members held as captives and their dependents''.

Pub. L. 99–272, title II, § 2001(a)(2), Apr. 7, 1986, 100 Stat. 101, added item 1095 ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents''.

1985—Pub. L. 99–145, title VI, §§ 651(a)(2), 653(a)(2), Nov. 8, 1985, 99 Stat. 656, 658, added items 1076a and 1094.

1984—Pub. L. 98–525, title VI, § 631(a)(2), title XIV, § 1401(e)(2)(B), (5)(B), Oct. 19, 1984, 98 Stat. 2543, 2616, 2618, substituted in item 1074a ''Medical and dental care: members on duty other than active duty; injuries, diseases, and illnesses incident to duty'' for ''Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training'' and added items 1074b and 1093.

1983—Pub. L. 98–94, title IX, §§ 932(a)(2), 933(a)(2), title X, § 1012(a)(2), title XII, § 1268(5)(B), Sept. 24, 1983, 97 Stat. 650, 651, 665, 706, added items 1074a, 1091, and 1092, and struck out ''; reports'' at end of item 1081.

1982—Pub. L. 97–295, § 1(15)(B), Oct. 12, 1982, 96 Stat. 1290, added item 1090.

1980—Pub. L. 96–513, title V, § 511(34)(D), Dec. 12, 1980, 94 Stat. 2923, in items 1071 and 1073 substituted ''this chapter'' for ''sections 1071–1087 of this title'', and in item 1086 substituted ''benefits'' for ''care''.

1976—Pub. L. 94–464, § 1(b), Oct. 8, 1976, 90 Stat. 1986, added item 1089.

1970—Pub. L. 91–481, § 2(2), Oct. 21, 1970, 84 Stat. 1082, added item 1088.

1966—Pub. L. 89–614, § 2(9), Sept. 30, 1966, 80 Stat. 866, substituted ''1087'' for ''1085'' in items 1071 and 1073, ''Medical care'' and ''authorized care in facilities of uniformed services'' for ''Medical and dental care'' and ''specific inclusions and exclusions'' in item 1077, ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in item 1082, and added items 1086 and 1087.

1965—Pub. L. 89–264, § 2, Oct. 19, 1965, 79 Stat. 989, substituted ''executive department'' for ''uniformed service'' in item 1085.

1958—Pub. L. 85–861, § 1(25)(A), (C), Sept. 2, 1958, 72 Stat. 1445, 1450, substituted ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in heading of chapter, and substituted items 1071 to 1085 for former items 1071 to 1086.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1490 of this title; title 14 sections 668, 705; title 38 sections 1713, 7423, 8111; title 42 sections 248c, 248d.

§ 1071. Purpose of this chapter

The purpose of this chapter is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(34)(A), (B), Dec. 12, 1980, 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1071	37:401.	June 7, 1956, ch. 374, § 101, 70 Stat. 250.

The words ''and certain former members'' are inserted to reflect the fact that many of the persons entitled to retired pay are former members only. The words ''and dental'' are inserted to reflect the fact that members and, in certain limited situations, dependents are entitled to dental care under sections 1071–1085 of this title.

PRIOR PROVISIONS

A prior section 1071, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which stated the purpose of former sections 1071 to 1086 of this title, and provided for their construction, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Purpose of this chapter'' for ''Purpose of sections 1071–1087 of this title'' in section catchline, and substituted reference to this chapter for reference to sections 1071–1087 of this title in text.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–614 provided that: ''The amendments made by this Act [see Short Title of 1966 Amendment note below] shall become effective January 1, 1967, except that those amendments relating to outpatient care in civilian facilities for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days shall become effective on October 1, 1966.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VII, § 701, Dec. 4, 1987, 101 Stat. 1108, provided that: ''This title [enacting sections 1103, 2128 to 2130 [now 16201 to 16203], and 6392 of this title, amending sections 533, 591, 1079, 1086, 1251, 2120, 2122, 2123, 2124, 2127, 2172 [now 16302], 3353, 3855, 5600, 8353, and 8855 of this title, section 302 of Title 37, Pay and Allowances of the Uniformed Services, and section 460 of Title 50, Appendix, War and National Defense, enacting provisions set out as notes under sections 1073, 1074, 1079, 1092, 1103, 2121, 2124, 12201, and 16201 of this title, amending provisions set out as notes under sections 1073 and 1101 of this title, and repealing provisions set out as notes under sections 2121 and 2124 of this title] may be cited as the 'Military Health Care Amendments of 1987'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89–614 provided: ''That this Act [enacting sections 1086 and 1087 of this title, amending this section and sections 1072 to 1074, 1076 to 1079, 1082, and 1084 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Military Medical Benefits Amendments of 1966'.''

ANNUAL BENEFICIARY SURVEY

Pub. L. 102–484, div. A, title VII, § 724, Oct. 23, 1992, 106 Stat. 2440, as amended by Pub. L. 103–337, div. A, title VII, § 717, Oct. 5, 1994, 108 Stat. 2804, provided that:

''(a) SURVEY REQUIRED.—The administering Secretaries shall conduct annually a formal survey of persons receiving health care under chapter 55 of title 10, United States Code, in order to determine the following:

''(1) The availability of health care services to such persons through the health care system provided for under that chapter, the types of services received, and the facilities in which the services were provided.

''(2) The familiarity of such persons with the services available under that system and with the facilities in which such services are provided.

''(3) The health of such persons.

''(4) The level of satisfaction of such persons with that system and the quality of the health care provided through that system.

''(5) Such other matters as the administering Secretaries determine appropriate.

''(b) EXEMPTION.—An annual survey under subsection (a) shall be treated as not a collection of information for the purposes for which such term is defined in section 3502(4) of title 44, United States Code.

''(c) DEFINITION.—For purposes of this section, the term 'administering Secretaries' has the meaning given such term in section 1072(3) of title 10, United States Code.''

COMPREHENSIVE STUDY OF MILITARY MEDICAL CARE SYSTEM

Pub. L. 102–190, div. A, title VII, § 733, Dec. 5, 1991, 105 Stat. 1408, as amended by Pub. L. 102–484, div. A, title VII, § 723, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense to conduct a comprehensive study of the military medical care system, not later than Dec. 15, 1992, to submit to congressional defense committees a detailed accounting on progress of the study, including preliminary results of the study, and not later than Dec. 15, 1993, submit to congressional defense committees a final report on the study.

IDENTIFICATION AND TREATMENT OF DRUG AND ALCOHOL DEPENDENT PERSONS IN THE ARMED FORCES

Pub. L. 92–129, title V, § 501, Sept. 28, 1971, 85 Stat. 361, which directed Secretary of Defense to devise ways to identify, treat, and rehabilitate drug and alcohol dependent members of the armed forces, to identify, refuse admission to, and refer to civilian treatment facilities such persons seeking entrance to the armed forces, and to report to Congress on and suggest additional legislation concerning these matters, was repealed and restated as sections 978 and 1090 of this title by Pub. L. 97–295, §§ 1(14)(A), (15)(A), 6(b), Oct. 12, 1982, 96 Stat. 1289, 1290, 1314.

§ 1072. Definitions

In this chapter:

(1) The term ''uniformed services'' means the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.

(2) The term ''dependent'', with respect to a member or former member of a uniformed service, means—

(A) the spouse;

(B) the unremarried widow;

(C) the unremarried widower;

(D) a child who—

(i) has not attained the age of 21;

(ii) has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support; or

(iii) is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a member or former member under clause (i) or (ii) and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support;

(E) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household;

(F) the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(G) a person who (i) is the unremarried former spouse of a member or former member who performed at least 20 years of service which is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay, and on the date of the final decree of divorce, dissolution, or annulment before April 1, 1985, had been married to the member or former member for a period of at least 20 years, at least 15 of which, but less than 20 of which, were during the period the member or former member performed service creditable in determining the member or former member's eligibility for retired or retainer pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(H) a person who would qualify as a dependent under clause (G) but for the fact that the date of the final decree of divorce, dissolution, or annulment of the person is on or after April 1, 1985, except that the term does not include the person after the end of the one-year period beginning on the date of that final decree; and

(I) an unmarried person who—

(i) is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a Territory or possession of the United States) for a period of at least 12 consecutive months;

(ii) either—

(I) has not attained the age of 21;

(II) has not attained the age of 23 and is enrolled in a full time course of study at an institution of higher learning approved by the administering Secretary; or

(III) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this subparagraph pursuant to subclause (I) or (II);

(iii) is dependent on the member or former member for over one-half of the person's support;

(iv) resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and

(v) is not a dependent of a member or a former member under any other subparagraph.

(3) The term ''administering Secretaries'' means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

(4) The term ''Civilian Health and Medical Program of the Uniformed Services'' means the program authorized under sections 1079 and 1086 of this title and includes contracts entered into under section 1091 or 1097 of this title and demonstration projects under section 1092 of this title.

(5) The term ''covered beneficiary'' means a beneficiary under this chapter other than a beneficiary under section 1074(a) of this title.

(6) The term ''child'', with respect to a member or former member of a uniformed service, means the following:

(A) An unmarried legitimate child.

(B) An unmarried adopted child.

(C) An unmarried stepchild.

(D) An unmarried person—

(i) who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the person by the member or former member; and

(ii) who otherwise meets the requirements specified in paragraph (2)(D).

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title I, §115(b), title V, §511(34)(A), (35), (36), Dec. 12, 1980, 94 Stat. 2877, 2922, 2923; Pub. L. 97–252, title X, §1004(a), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–525, title VI, §645(a), Oct. 19, 1984, 98 Stat. 2548; Pub. L. 98–557, §19(1), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VII, §701(b), Nov. 14, 1986, 100 Stat. 3898; Pub. L. 101–189, div. A, title VII, §731(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 102–484, div. A, title VII, §706, Oct. 23, 1992, 106 Stat. 2433; Pub. L. 103–160, div. A, title VII, §702(a), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, §701(a), Oct. 5, 1994, 108 Stat. 2797.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1072(1)	37:402(a)(1).	June 7, 1956, ch. 374,
1072(2)	37:402(a)(4).	§102(a)(1), (4), 70 Stat. 250.

In clause (1), the words ''the armed forces'' are substituted for the words ''the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard'' to reflect section 101(4) of this title.

In clause (2), the words ''or to a person who died while a member or retired member of a uniformed service'' and ''lawful'' are omitted as surplusage. The word ''former'' is substituted for the word ''retired'', since a retired member or a member of the Fleet Reserve or the Fleet Marine Corps Reserve is already included as a ''member'' of an armed force.

Clause (2)(E) combines 37:402(a)(4)(E) and (G).

PRIOR PROVISIONS

A prior section 1072, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which defined terms used in former sections 1071 to 1086 of this title, was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Par. (2)(D). Pub. L. 103–337, §701(a)(1), substituted ''a child who'' for ''an unmarried legitimate child, including an adopted child or stepchild, who'' in introductory provisions.

Par. (6). Pub. L. 103–337, §701(a)(2), added par. (6).

1993—Par. (2)(I). Pub. L. 103–160 added subpar. (I).

1992—Par. (2)(D). Pub. L. 102–484 added subpar. (D) and struck out former subpar. (D) which read as follows: ''an unmarried legitimate child, including an adopted child or a stepchild, who either—

''(i) has not passed his twenty-first birthday;

''(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

''(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support;''.

1989—Par. (2)(H). Pub. L. 101–189 added subpar. (H).

1986—Par. (1). Pub. L. 99–661, §701(b)(1), substituted ''The term 'uniformed services' means'' for '' 'Uniformed services' means''.

Par. (2). Pub. L. 99–661, §701(b)(2), substituted ''The term 'dependent', with respect to'' for '' 'Dependent', with respect to''.

Par. (3). Pub. L. 99–661, §701(b)(3), substituted ''The term 'administering Secretaries' means'' for '' 'Administering Secretaries' means''.

Pars. (4), (5). Pub. L. 99–661, §701(b)(4), added pars. (4) and (5).

1984—Par. (2)(D)(iii). Pub. L. 98–557, §19(1)(A), substituted reference to the administering Secretary for reference to the Secretary of Defense or the Secretary of Health and Human Services.

Par. (2)(G). Pub. L. 98–525 added subpar. (G).

Par. (3). Pub. L. 98–557, §19(1)(B), added par. (3).

1982—Par. (2)(F). Pub. L. 97–252 added cl. (F).

1980—Pub. L. 96–513, §511(34)(A), substituted in introductory material reference to this chapter for reference to sections 1071–1087 of this title.

Par. (1). Pub. L. 96–513, §511(35), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Par. (2). Pub. L. 96–513, §§115(b), 511(36), substituted ''spouse'' for ''wife'' in cl. (A), struck out cl. (C) ''the husband, if he is in fact dependent on the member or former member for over one-half of his support;'', redesignated cls. (D), (E), and (F) as (C), (D), and (E), respectively, in cl. (C) as so redesignated, struck out '', if, because of mental or physical incapacity he was in fact dependent on the member or former member at the time of her death for over one-half of his support'' after ''the unremarried widower'', and in cl. (D)(iii) as so redesignated, substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (1).

Pub. L. 89–614 substituted ''1087'' for ''1085'' in introductory phrase.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 702(b) of Pub. L. 103–160 provided that: ''Section 1072(2)(I) of title 10, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 731(d) of Pub. L. 101–189 provided that:

''(1) The amendments made by this section [enacting section 1086a of this title and amending this section and sections 1076 and 1086 of this title] apply to a person referred to in section 1072(2)(H) of title 10, United States Code (as added by subsection (a)), whose decree of divorce, dissolution, or annulment becomes final on or after the date of the enactment of this Act [Nov. 29, 1989].

''(2) The amendments made by this section shall also apply to a person referred to in such section whose decree of divorce, dissolution, or annulment became final during the period beginning on September 29, 1988, and ending on the day before the date of the enactment of this Act, as if the amendments had become effective on September 29, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 645(d) of Pub. L. 98–525 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and provisions set out as a note under section 1408 of this title and enacting provisions set out as a note under this section] shall be effective on January 1, 1985, and shall apply with respect to health care furnished on or after that date.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 115(b) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(34)(A), (35), (36) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSITIONAL PROVISIONS FOR QUALIFICATION FOR CONVERSION HEALTH POLICIES; PREEXISTING CONDITIONS

Section 731(e) of Pub. L. 101–189 provided that:

''(1) In the case of a person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 98 Stat. 2549) [set out below], on September 28, 1988, the Secretary of Defense shall make a conversion health policy available for purchase by the person during the remaining period the person is considered to be a dependent under that section (or within a reasonable time after that period as prescribed by the Secretary of Defense).

''(2) Purchase of a conversion health policy under paragraph (1) by a person shall entitle the person to health care for preexisting conditions in the same manner and to the same extent as provided by section 1086a(b) of title 10, United States Code (as added by subsection (b)), until the end of the one-year period beginning on the later of—

''(A) the date the person is no longer qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985; and

''(B) the date of the purchase of the policy.

''(3) For purposes of this subsection, the term 'conversion health policy' has the meaning given that term in section 1086a(c) of title 10, United States Code (as added by subsection (b)).''

DEPENDENT; QUALIFICATION AS; EFFECTIVE DATE

Section 645(c) of Pub. L. 98–525, as amended by Pub. L. 99–661, div. A, title VI, § 646, Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–271, § 1, Mar. 29, 1988, 102 Stat. 45; Pub. L. 100–271, § 1, Mar. 29, 1988, 102 Stat. 45, which provided that a person who would qualify as a dependent under section 1072(2)(G) of title 10 but for the fact that the person's final decree of divorce, dissolution, or annulment was dated on or after Apr. 1, 1985, would be considered to be a dependent under such section until the later of (1) Dec. 31, 1988, and (2) the last day of the two-year period beginning on the date of such final decree, was repealed by Pub. L. 100–456, div. A, title VI, § 651(b), Sept. 29, 1988, 102 Stat. 1990, effective Sept. 29, 1988, or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in section 1076(f) of title 10), whichever is later.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1040, 1060a, 1062, 1076, 1076a, 1078a, 1079, 1086, 1086a, 1481, 1490, 2114, 2147 of this title.

§ 1073. Administration of this chapter

Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter, for the armed forces under his jurisdiction, the Secretary of Transportation shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter and for the National Oceanic and Atmospheric Administration and the Public Health Service.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(34)(A), (C), (35), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, § 19(2), Oct. 30, 1984, 98 Stat. 2869.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1073	37:402(b).	June 7, 1956, ch. 374, § 102(b), 70 Stat. 251.

The words ''armed forces under his jurisdiction'' are substituted for the words ''Army, Navy, Air Force, and Marine Corps and for the Coast Guard when it is operating as a service in the Navy'' to reflect section 101(4) of this title.

PRIOR PROVISIONS

A prior section 1073, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, which related to right to vote in war-time

presidential and congressional election, was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 inserted provisions which transferred authority to administer chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy from the Secretary of Health and Human Services to the Secretary of Transportation.

1980—Pub. L. 96–513 substituted in section catchline ''of this chapter'' for ''of sections 1071–1087 of this title'', and substituted in text ''this chapter'' for ''sections 1071–1087 of this title'', ''those sections'', and ''them'', ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

USE OF HEALTH MAINTENANCE ORGANIZATION MODEL AS OPTION FOR MILITARY HEALTH CARE

Pub. L. 103–160, div. A, title VII, §731, Nov. 30, 1993, 107 Stat. 1696, as amended by Pub. L. 103–337, div. A, title VII, §715, Oct. 5, 1994, 108 Stat. 2803, provided that:

''(a) USE OF MODEL.—The Secretary of Defense shall prescribe and implement a health benefit option (and accompanying cost-sharing requirements) for covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code, that is modelled on health maintenance organization plans offered in the private sector and other similar Government health insurance programs. The Secretary shall include, to the maximum extent practicable, the health benefit option required under this subsection as one of the options available to covered beneficiaries in all managed health care initiatives undertaken by the Secretary after December 31, 1994.

''(b) ELEMENTS OF OPTION.—The Secretary shall offer covered beneficiaries who enroll in the health benefit option required under subsection (a) reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States. The Secretary shall allow enrollees to seek health care outside of the option, except that the Secretary may prescribe higher out-of-pocket costs than are provided under section 1079 or 1086 of title 10, United States Code, for enrollees who obtain health care outside of the option.

''(c) GOVERNMENT COSTS.—The health benefit option required under subsection (a) shall be administered so that the costs incurred by the Secretary under each managed health care initiative that includes the option are no greater than the costs that would otherwise be incurred to provide health care to the covered beneficiaries who enroll in the option.

''(d) COVERED BENEFICIARY DEFINED.—For purposes of this section, the term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(e) REGULATIONS.—Not later than December 31, 1994, the Secretary shall prescribe final regulations to implement the health benefit option required by subsection (a).

''(f) MODIFICATION OF EXISTING CONTRACTS.—In the case of managed health care contracts in effect or in final stages of acquisition as of December 31, 1994, the Secretary may modify such contracts to incorporate the health benefit option required under subsection (a).''

MANAGED HEALTH CARE PROGRAM AND CONTRACTS FOR MILITARY HEALTH SERVICES SYSTEM

Pub. L. 103–139, title VIII, §8025, Nov. 11, 1993, 107 Stat. 1443, provided that: ''Notwithstanding any other provision of law, to establish region-wide, at-risk, fixed price managed care contracts possessing features similar to those of the CHAMPUS Reform Initiative, the Secretary of Defense shall submit to the Congress a plan to implement a nation-wide managed health care program for the military health services system not later than December 31, 1993: *Provided*, That the program shall include, but not be limited to: (1) a uniform, stabilized benefit structure characterized by a triple option health benefit feature; (2) a regionally-based health care management system; (3) cost minimization incentives including 'gatekeeping' and annual enrollment procedures, capitation budgeting, and at-risk managed care support contracts; and (4) full and open competition for all managed care support contracts: *Provided further*, That the implementation of the nation-wide managed care military health services system shall be completed by September 30, 1996: *Provided further*, That the Department shall competitively award contracts in fiscal year 1994 for at least four new region-wide, at-risk, fixed price managed care support contracts consistent with the nation-wide plan, that one such contract shall include the State of Florida (which may include Department of Veterans Affairs' medical facilities with the concurrence of the Secretary of Veterans Affairs), one such contract shall include the States of Washington and Oregon, and one such contract shall include the State of Texas: *Provided further*, That any law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods shall be preempted and shall not apply to any region-wide, at-risk, fixed price managed care contract entered into pursuant to chapter 55 of title 10, United States Code: *Provided further*, That the Department shall competitively award within 13 months after the date of enactment of this Act [Nov. 11, 1993] two contracts for stand-alone, at-risk managed mental health services in high utilization, high-cost areas, consistent with the management and service delivery features in operation in Department of Defense managed mental health care contracts: *Provided further*, That the Assistant Secretary of Defense for Health Affairs shall, during the current fiscal year, initiate through competitive procedures a managed health care program for eligible beneficiaries in the area of Homestead Air Force Base with benefits and services substantially identical to those established to serve beneficiary populations in areas where military medical facilities have been terminated, to include retail pharmacy networks available to Medicare-eligible beneficiaries, and shall present a plan to implement this program to the House and Senate Committees on Appropriations not later than January 15, 1994.''

CONDITION ON EXPANSION OF CHAMPUS REFORM INITIATIVE TO OTHER LOCATIONS

Pub. L. 102–484, div. A, title VII, §712, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, §720, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, §714(c), Oct. 5, 1994, 108 Stat. 2803, provided that:

''(a) CONDITION.—(1) Except as provided in subsection (b), the Secretary of Defense may not expand the CHAMPUS reform initiative underway in the States of California and Hawaii to another location until not less than 90 days after the date on which the Secretary certifies to Congress that expansion of the initiative to that location is the most efficient method of providing health care to covered beneficiaries in that location. In determining whether the expansion of the CHAMPUS reform initiative to a location is the most efficient method of providing health care to covered beneficiaries in that location, the Secretary shall consider the cost-effectiveness of the initiative (while assuring that the combined cost of care in military treatment facilities and under the Civilian Health and Medical Program of the Uniformed Services will not be increased as a result of the expansion) and the effect of the expansion of the initiative on the access of covered beneficiaries to health care and on the quality of health care received by covered beneficiaries.

''(2) To the extent any revision of the CHAMPUS reform initiative is necessary in order to make the certification required by this subsection, the Secretary shall assure that enrolled covered beneficiaries may obtain health care services with reduced out-of-pocket costs, as compared to standard CHAMPUS.

''(b) EXCEPTION.—The Secretary of Defense may waive the operation of the condition on the expansion of the CHAMPUS reform initiative specified in subsection (a) in order to expand the initiative to a location adversely affected by the closure or realignment of a military installation in that location, as determined by the Secretary.

''(c) EVALUATION OF CERTIFICATION.—The Comptroller General of the United States and the Director of the Congressional Budget Office shall evaluate each certification made by the Secretary of Defense under subsection (a) that expansion of the CHAMPUS reform initiative to another location is the most efficient method of providing health care to covered beneficiaries in that location. They shall submit their findings to Congress if these findings differ substantially from the findings upon which the Secretary made the decision to expand the CHAMPUS reform initiative.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The terms 'CHAMPUS reform initiative' and 'initiative' mean the health care delivery project required by section 702 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 10 U.S.C. 1073 note).

''(2) The term 'covered beneficiary' has the meaning given that term in section 1072(5) of title 10, United States Code.

''(3) The terms 'Civilian Health and Medical Program of the Uniformed Services' and 'CHAMPUS' have the meaning given the term 'Civilian Health and Medical Program of the Uniformed Services' in section 1072(4) of title 10, United States Code.''

ALTERNATIVE HEALTH CARE DELIVERY METHODOLOGIES

Pub. L. 102–484, div. A, title VII, § 713, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, § 719, Nov. 30, 1993, 107 Stat. 1694, provided that:

''(a) CONTINUATION OF HEALTH CARE REFORM INITIATIVES.—(1) During fiscal years 1993 through 1996, the Secretary of Defense shall continue to conduct a broad array of reform initiatives for furnishing health care to persons who are eligible to receive health care under chapter 55 of title 10, United States Code.

''(2) The health care reform initiatives conducted in accordance with paragraph (1) shall include CHAMPUS alternatives, the CHAMPUS reform initiative, catchment area management, coordinated care, and such other reform initiatives as the Secretary of Defense considers to be appropriate.

''(3) Not later than September 30, 1994, the Secretary shall submit to Congress a report regarding the health care reform initiatives conducted during fiscal years 1993 and 1994. The report shall include a discussion of the cost effectiveness of the initiatives and the extent to which the persons who received health care under such initiatives are satisfied with that health care.

''(b) CONTINUATION OF CHAMPUS REFORM INITIATIVE IN HAWAII AND CALIFORNIA.—(1) The Secretary of Defense shall ensure that a replacement or successor contract for the CHAMPUS reform initiative contract applicable to the States of California and Hawaii is awarded in sufficient time for the contractor to begin to provide health care in those States under the replacement or successor contract as soon as practicable after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''(2) The Secretary shall use competitive procedures for awarding a replacement or successor contract under paragraph (1).

''(c) EVALUATION OF CHAMPUS REFORM INITIATIVE.—(1) Not later than June 1, 1994, the Secretary of Defense shall enter into a contract with a non-Federal entity under which the entity will perform an evaluation of the performance of the CHAMPUS reform initiative in the States of California and Hawaii. The evaluation shall cover each of the fiscal years during which the initiative is carried out in those States under the replacement or successor contract referred to in subsection (b) and under the predecessor contracts. The evaluation shall include a comparison of the cost savings and claims experience resulting in each such fiscal year from carrying out the CHAMPUS reform initiative in those States.

''(2) Not later than one year after the date on which the contract for evaluation is entered into under paragraph (1), the non-Federal entity making the evaluation shall submit to the Secretary and to Congress a report on the results of the evaluation.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'CHAMPUS' means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of section 1072 of title 10, United States Code.

''(2) The term 'covered beneficiary' has the meaning given that term in paragraph (5) of such section.

''(3) The term 'CHAMPUS reform initiative' means the health care delivery project required by section 702 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 10 U.S.C. 1073 note).

''(4) The term 'catchment area management' means the methodology provided for demonstration in accordance with section 731 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 10 U.S.C. 1092 note).''

MILITARY HEALTH CARE FOR PERSONS RELIANT ON HEALTH CARE FACILITIES AT BASES BEING CLOSED OR REALIGNED

Pub. L. 102–484, div. A, title VII, § 722, Oct. 23, 1992, 106 Stat. 2439, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a joint services working group on the provision of military health care to persons who rely for health care on health care facilities at military installations being closed or realigned.

''(b) MEMBERSHIP.—The members of the working group shall include the Assistant Secretary of Defense for Health Affairs, the Surgeon General of the Army, the Surgeon General of the Navy, the Surgeon General of the Air Force, or a designee of each such person, and one independent member appointed by the Secretary of Defense from among private citizens whose interest in matters within the responsibility of the working group qualify that person to represent all personnel entitled to health care under chapter 55 of title 10, United States Code.

''(c) DUTIES.—(1) In the case of each closure or realignment of a military installation that will adversely affect the accessibility of health care in a facility of the uniformed services for persons entitled to such health care under chapter 55 of title 10, United States Code, the working group shall solicit the views of such persons regarding suitable substitutes for the furnishing of health care to those persons under that chapter.

''(2) In carrying out paragraph (1), the working group—

''(A) shall conduct meetings with persons referred to in that paragraph, or representatives of such persons;

''(B) may use reliable sampling techniques;

''(C) shall visit the areas where closures or realignments of military installations will adversely affect the accessibility of health care in a facility of the uniformed services for persons referred to in paragraph (1) and shall conduct public meetings; and

''(D) shall ensure that members of the uniformed services on active duty, members and former members of the uniformed services entitled to retired or retainer pay, and dependents and survivors of such members and retired personnel are afforded the opportunity to express views.

''(d) RECOMMENDATIONS.—With respect to each closure and realignment of a military installation referred to in subsection (c), the working group shall submit to the Congress and the Secretary of Defense the working group's recommendations regarding the alternative means for continuing to provide accessible health care under chapter 55 of title 10, United States Code, to persons referred to in that subsection.

''(e) APPLICATION OF ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the joint services working group established pursuant to this section.''

AUTHORIZATION FOR EXTENSION OF CHAMPUS REFORM INITIATIVE

Pub. L. 102–190, div. A, title VII, §722, Dec. 5, 1991, 105 Stat. 1406, provided that:

''(a) AUTHORITY.—Upon the termination (for any reason) of the contract of the Department of Defense in effect on the date of the enactment of this Act [Dec. 5, 1991] under the CHAMPUS reform initiative established under section 702 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 1073 note), the Secretary of Defense may enter into a replacement or successor contract with the same or a different contractor and for such amount as may be determined in accordance with applicable procurement laws and regulations and without regard to any limitation (enacted before, on, or after the date of the enactment of this Act) on the availability of funds for that purpose.

''(b) TREATMENT OF LIMITATION ON FUNDS FOR PROGRAM.—No provision of law stated as a limitation on the availability of funds may be treated as constituting the extension of, or as requiring the extension of, any contract under the CHAMPUS reform initiative that would otherwise expire in accordance with its terms.''

EXTENSION OF CHAMPUS REFORM INITIATIVE FOR CERTAIN STATES

Pub. L. 102–172, title VIII, §8032, Nov. 26, 1991, 105 Stat. 1178, provided: ''That notwithstanding any other provision of law, the CHAMPUS Reform Initiative contract for California and Hawaii shall be extended until February 1, 1994, within the limits and rates specified in the contract: *Provided further*, That the Department shall competitively award contracts for the geographic expansion of the CHAMPUS Reform Initiative in Florida (which may include Department of Veterans Affairs medical facilities with the concurrence of the Secretary of Veterans Affairs), Washington, Oregon, and the Tidewater region of Virginia: *Provided further*, That competitive expansion of the CHAMPUS Reform Initiative may occur in any other regions that the Assistant Secretary of Defense for Health Affairs deems appropriate.''

CONDITIONS ON EXPANSION OF CHAMPUS REFORM INITIATIVE

Pub. L. 101–510, div. A, title VII, §715, Nov. 5, 1990, 104 Stat. 1584, provided that:

''(a) CERTIFICATION OF COST-EFFECTIVENESS.—The Secretary of Defense may not proceed with the proposed expansion of the CHAMPUS reform initiative underway in the States of California and Hawaii until not less than 90 days after the date on which the Secretary certifies to the Congress that—

''(1) such CHAMPUS reform initiative has been demonstrated to be more cost-effective than the Civilian Health and Medical Program of the Uniformed Services or any other health care demonstration program being conducted by the Secretary;

''(2) the contractor selected to underwrite the delivery of health care under the CHAMPUS reform initiative will accomplish the expansion without the disruption of services to beneficiaries under the Civilian Health and Medical Program of the Uniformed Services or delays in the processing of claims; and

''(3) such contractor is currently, and projected to remain, financially able to underwrite the CHAMPUS reform initiative.

''(b) REPORT ON CERTIFICATION.—Not later than 30 days after the date on which the Secretary of Defense submits the certification required by subsection (a), the Comptroller General of the United States and the Director of the Congressional Budget Office shall jointly submit to Congress a report evaluating such certification.

''(c) CHAMPUS REFORM INITIATIVE DEFINED.—For purposes of this section, the term 'CHAMPUS reform initiative' has the meaning given that term in section 702(d)(1) of the Department of Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 1073 note).''

REQUIREMENTS PRIOR TO TERMINATION OF MEDICAL SERVICES AT MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 101–510, div. A, title VII, §716, Nov. 5, 1990, 104 Stat. 1585, provided that:

''(a) PROHIBITION.—During the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending on September 30, 1995, the Secretary of a military department may not take any action to close a military medical facility under the jurisdiction of that Secretary or reduce the level of care provided at such a medical facility until 90 days after the date on which the Secretary submits to Congress a report described in subsection (b).

''(b) ELEMENTS OF REPORT.—A report referred to in subsection (a) shall include the following:

''(1) The reason for the action.

''(2) The projected savings to the Government from the action.

''(3) The impact on CHAMPUS and MEDICARE costs in the catchment area of the facility.

''(4) The impact on beneficiary cost-sharing.

''(5) An examination of alternative ways to provide care to the persons served by the facility that the Secretary determines would not result in adverse consequences to such persons.

''(6) An explanation of how care will be provided for and the cost, if any, to those persons to receive such care.

''(c) EXCEPTION.—Subsection (a) shall not apply with respect to the closing of a military medical facility (or the reduction of the level of care provided at a military medical facility) as a result of a base closure or an operational deployment.''

REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE; FUNDING LIMITATIONS; DEFINITION

Pub. L. 100–180, div. A, title VII, §732(e)–(g), Dec. 4, 1987, 101 Stat. 1120, 1121, provided that:

''(e) REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE.—(1) The Secretary of Defense shall make every effort to enter into an agreement, similar to the one being negotiated with a private insurer on the date of the enactment of this Act [Dec. 4, 1987], that would provide an insurance plan that meets the requirements described in paragraph (3).

''(2) If an agreement referred to in paragraph (1) is not entered into before a request for proposals with re-

spect to the second phase of the CHAMPUS reform initiative is issued, the Secretary shall provide for an insurance plan which meets the requirements described in paragraph (3) through either of the following means:

''(A) By including, in any request for proposals with respect to the second (and any subsequent) phase of the CHAMPUS reform initiative, a requirement for the contractor to offer an option to elect an insurance plan which meets the requirements described in paragraph (3).

''(B) By including, in any request for proposals for a contract to process claims for CHAMPUS, a requirement for the contractor (known as a fiscal intermediary) to offer an option to elect an insurance plan which meets the requirements described in paragraph (3).

''(3) The insurance plan requirements referred to in paragraphs (1) and (2) are the following:

''(A) At the election of the individual, the plan shall be available to an individual losing eligibility (by reason of discharge, release from active duty, a change in family status (including divorce or annulment, or, in the case of a child, reaching age 22), or other similar reason) to be a covered beneficiary under chapter 55 of title 10, United States Code.

''(B) The plan shall provide for coverage of benefits similar to the coverage of benefits available to the individual under CHAMPUS, regardless of any pre-existing condition.

''(C) The plan shall provide that enrollees in the plan shall pay the full periodic charges for the benefit coverage.

''(f) FUNDING LIMITATIONS.—(1) None of the funds appropriated or otherwise made available to the Department of Defense may be obligated or expended for the purpose of entering into a contract for the demonstration phase of the CHAMPUS reform initiative required by section 702(a)(1) of the National Defense Authorization Act for Fiscal Year 1987 [section 702(a)(1) of Pub. L. 99–661, set out as a note below] until the requirements of section 702(a)(4) of such Act (as added by subsection (a)) are met.

''(2) None of the funds appropriated or otherwise made available to the Department of Defense may be obligated or expended for the purpose of requesting a proposal for the second (or any subsequent) phase of the CHAMPUS reform initiative as described in section 702(c) of the National Defense Authorization Act for Fiscal Year 1987 until the requirements of paragraph (2) of section 702(c) of such Act (as added by subsection (c)) are met.

''(g) CHAMPUS DEFINED.—In this section, the term 'CHAMPUS' has the meaning given such term by section 1072(4) of title 10, United States Code.''

CHAMPUS REFORM INITIATIVE

Pub. L. 99–661, div. A, title VII, § 702, Nov. 14, 1986, 100 Stat. 3899, as amended by Pub. L. 100–180, div. A, title VII, § 732(a), (c), Dec. 4, 1987, 101 Stat. 1119, provided that:

''(a) DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct a project designed to demonstrate the feasibility of improving the effectiveness of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) through the competitive selection of contractors to financially underwrite the delivery of health care services under the program.

''(2) The demonstration project required by paragraph (1)—

''(A) shall begin not later than September 30, 1988, and continue for not less than one year;

''(B) shall include not more than one-third of covered beneficiaries; and

''(C) shall include a health care enrollment system that meets the requirements specified in section 1099 of title 10, United States Code (as added by section 701(a)(1)).

''(3)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the development of the demonstration project required by paragraph (1). Such report shall include—

''(i) a description of the scope and structure of the project;

''(ii) an estimate of the costs of the care to be provided under the project; and

''(iii) a description of the health care enrollment system included in the project.

''(B) The report required by subparagraph (A) shall be submitted—

''(i) not later than 60 days before the initiation of the project, if the project is to be restricted to a contiguous area of the United States; or

''(ii) not later than 60 days before a solicitation for bids or proposals with respect to such project is issued, if the project will not be restricted to a contiguous area of the United States.

''(4) The Secretary of Defense shall develop a methodology to be used in evaluating the results of the demonstration project required by paragraph (1) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on such methodology.

''(b) STUDY OF HEALTH CARE ALTERNATIVES.—(1) The demonstration project required by subsection (a)(1) shall include a study of—

''(A) methods to guarantee the maintenance of competition among providers of health care to persons under the jurisdiction of the Secretary;

''(B) the merits of the use of a voucher system or a fee schedule for provision of health care to such persons; and

''(C) methods to guarantee that community hospitals are given equal consideration with other health care providers for provision of health care services under contracts with the Department of Defense.

''(2) The Secretary shall submit to Congress a report discussing the matters evaluated in the study required by paragraph (1) before the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 14, 1986].

''(c) PHASED IMPLEMENTATION OF CHAMPUS REFORM INITIATIVE.—(1) The Secretary of Defense may proceed with implementation of the CHAMPUS reform initiative, to be carried out in two phases during a period of not less than two years, if—

''(A) the Secretary determines, based on the results of the demonstration project required by subsection (a)(1), that such initiative should be implemented;

''(B) not less than one year elapses after the date on which the demonstration project required by subsection (a)(1) is initiated; and

''(C) 90 days elapse after the date on which the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report that includes—

''(i) a description of the results of the demonstration project, evaluated in accordance with the methodology developed under subsection (a)(4);

''(ii) a description of any changes the Secretary intends to make in the initiative during the proposed implementation; and

''(iii) a comparison of the costs of providing health care under CHAMPUS with the costs of providing health care under the demonstration project and the estimated costs of providing health care under the CHAMPUS reform initiative if fully implemented.

''(2) The Secretary may not issue a request for proposals with respect to the second (or any subsequent) phase of the CHAMPUS reform initiative until—

''(A) all principal features of the demonstration project, including networks of providers of health care, have been in operation for not less than one year; and

''(B) the expiration of 60 days after the date on which the report described in paragraph (1)(C) has

been received by the committees referred to in such paragraph.

''(d) DEFINITIONS.—In this section:

''(1) The term 'CHAMPUS reform initiative' means the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''(2) The term 'Civilian Health and Medical Program of the Uniformed Services' has the meaning given such term in section 1072(4) of title 10, United States Code (as added by section 701(b)).

''(3) The term 'covered beneficiary' has the meaning given such term in section 1072(5) of title 10, United States Code (as added by section 701(b)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1072 of this title.

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(c) Funds appropriated to a military department may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the armed forces. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(2), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–525, title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub. L. 98–557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 101–189, div. A, title VII, § 729, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; Pub. L. 101–510, div. A, title XIV, § 1484(j)(1), Nov. 5, 1990, 104 Stat. 1718.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1074(a)	37:421(a).	June 7, 1956, ch. 374, §§ 102(a)(3) (as applicable to § 301(b)), 301(a), (b), 70 Stat. 250, 253.
1074(b)	37:402(a)(3) (as applicable to 37:421(b)). 37:421(b).	

In subsection (a), words of entitlement are substituted for the correlative words of obligation.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active duty as defined in section 901(b) of Title 50'' to reflect section 101(22) of this title. The words ''and dental'' are inserted before the word ''staff'' for clarity. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (c) of this section were contained in Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, which was formerly set out as a note under section 138 [now 114] of this title, and which was amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, to strike out these provisions.

A prior section 1074, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, which related to enactment of legislation relating to voting in other elections, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–510 substituted ''Secretary of Veterans Affairs'' for ''Administrator'' after ''operated by the''.

1989—Subsec. (b). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, § 729, inserted at end ''If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.''

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services wherever appearing.

Subsec. (c). Pub. L. 98–525 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, § 511(36), (37), substituted ''Secretary of Health and Human Services'' and ''President'' for ''Secretary of Health, Education, and Welfare'' and ''Bureau of the Budget'', respectively.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training) and authorized care to be provided to persons covered by subsec. (b) in facilities operated by the Administrator of Veterans' Affairs and available on a reimbursable basis at rates approved by the Bureau of the Budget.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (b) to approve uniform rates of reimbursement for care provided in facilities operated by Secretary of Veterans Affairs delegated to Secretary of Veterans Affairs, see section 7(a) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

PERSIAN GULF ILLNESS

Pub. L. 103–337, div. A, title VII, §§721, 722, Oct. 5, 1994, 108 Stat. 2804, 2807, provided that:

''SEC. 721. PROGRAMS RELATED TO DESERT STORM MYSTERY ILLNESS.

''(a) OUTREACH PROGRAM TO PERSIAN GULF VETERANS AND FAMILIES.—The Secretary of Defense shall institute a comprehensive outreach program to inform members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf Conflict, and the families of such members, of illnesses that may result from such service. The program shall be carried out through both medical and command channels, as well as any other means the Secretary considers appropriate. Under the program, the Secretary shall—

''(1) inform such individuals regarding—

''(A) common disease symptoms reported by Persian Gulf veterans that may be due to service in the Southwest Asia theater of operations;

''(B) blood donation policy;

''(C) available counseling and medical care for such members; and

''(D) possible health risks to children of Persian Gulf veterans;

''(2) inform such individuals of the procedures for registering in either the Persian Gulf Veterans Health Surveillance System of the Department of Defense or the Persian Gulf War Health Registry of the Department of Veterans Affairs; and

''(3) encourage such members to report any symptoms they may have and to register in the appropriate health surveillance registry.

''(b) INCENTIVES TO PERSIAN GULF VETERANS TO REGISTER.—In order to encourage Persian Gulf veterans to register any symptoms they may have in one of the existing health registries, the Secretary of Defense shall provide the following:

''(1) For any Persian Gulf veteran who is on active duty and who registers with the Department of Defense's Persian Gulf War Veterans Health Surveillance System, a full medical evaluation and any required medical care.

''(2) For any Persian Gulf War veteran who is, as of the date of the enactment of this Act [Oct. 5, 1994], a member of a reserve component, opportunity to register at a military medical facility in the Persian Gulf Veterans Health Care Surveillance System and, in the case of a Reserve who registers in that registry, a full medical evaluation by the Department of Defense. Depending on the results of the evaluation and on eligibility status, reserve personnel may be provided medical care by the Department of Defense.

''(3) For a Persian Gulf veteran who is not, as of the date of the enactment of this Act [Oct. 5, 1994], on active duty or a member of a reserve component, assistance and information at a military medical facility on registering with the Persian Gulf War Registry of the Department of Veterans Affairs and information related to support services provided by the Department of Veterans Affairs.

''(c) COMPATIBILITY OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REGISTRIES.—The Secretary of Defense shall take appropriate actions to ensure—

''(1) that the data collected by and the testing protocols of the Persian Gulf War Health Surveillance System maintained by the Department of Defense are compatible with the data collected by and the testing protocols of the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs; and

''(2) that all information on individuals who register with the Department of Defense for purposes of the Persian Gulf War Health Surveillance System is provided to the Secretary of Veterans Affairs for incorporation into the Persian Gulf War Veterans Health Registry.

''(d) PRESUMPTIONS ON BEHALF OF SERVICE MEMBER.—(1) A member of the Armed Forces who is a Persian Gulf veteran, who has symptoms of illness, and who the Secretary concerned finds may have become ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations.

''(2) A member of the Armed Forces who is a Persian Gulf veteran and who reports being ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations until such time as the weight of medical evidence establishes other cause or causes of the member's illness.

''(3) The Secretary concerned shall ensure that, for the purposes of health care treatment by the Department of Defense, health care and personnel administration, and disability evaluation by the Department of Defense, the symptoms of any member of the Armed Forces covered by paragraph (1) or (2) are examined in light of the member's service in the Persian Gulf War and in light of the reported symptoms of other Persian Gulf veterans. The Secretary shall ensure that, in providing health care diagnosis and treatment of the member, a broad range of potential causes of the member's symptoms are considered and that the member's symptoms are considered collectively, as well as by type of symptom or medical specialty, and that treatment across medical specialties is coordinated appropriately.

''(4) The Secretary of Defense shall ensure that the presumptions of service connection and illness specified in paragraphs (1) and (2) are incorporated in appropriate service medical and personnel regulations and are widely disseminated throughout the Department of Defense.

''(e) REVISION OF THE PHYSICAL EVALUATION BOARD CRITERIA.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall ensure that case definitions of Persian Gulf related illnesses, as well as the Physical Evaluation Board criteria used to set disability ratings for members no longer medically qualified for continuation on active duty, are established as soon as possible to permit accurate disability ratings related to a diagnosis of Persian Gulf illnesses.

''(2) Until revised disability criteria can be implemented and members of the Armed Forces can be rated against those criteria, the Secretary of Defense shall ensure—

''(A) that any member of the Armed Forces on active duty who may be suffering from a Persian Gulf-related illness is afforded continued military medical care; and

''(B) that any member of the Armed Forces on active duty who is found by a Physical Evaluation Board to be unfit for continuation on active duty as a result of a Persian Gulf-related illness for which the board has no rating criteria (or inadequate rating cri-

teria) for the illness or condition from which the member suffers is placed on the temporary disability retired list.

''(f) REVIEW OF RECORDS AND RERATING OF PREVIOUSLY DISCHARGED GULF WAR VETERANS.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall ensure that a review is made of the health and personnel records of each Persian Gulf veteran who before the date of the enactment of this Act [Oct. 5, 1994] was discharged from active duty, or was medically retired, as a result of a Physical Evaluation Board process.

''(2) The review under paragraph (1) shall be carried out to ensure that former Persian Gulf veterans who may have been suffering from a Persian Gulf-related illness at the time of discharge or retirement from active duty as a result of the Physical Evaluation Board process are revaluated [sic] in accordance with the criteria established under subsection (e)(1) and, if appropriate, are rerated.

''(g) PERSIAN GULF ILLNESS MEDICAL REFERRAL CENTERS.—The Secretary of Defense shall evaluate the feasibility of establishing one or more medical referral centers to provide uniform, coordinated medical care for Persian Gulf veterans on active duty who are or may be suffering from a Persian Gulf-related illness. The Secretary shall submit a report on such feasibility to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] not later than six months after the date of the enactment of this Act [Oct. 5, 1994].

''(h) ANNUAL REPORT TO CONGRESS.—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] an annual report on—

''(A) efforts taken and results achieved in notifying members of the Armed Forces and their families as part of the outreach program required by subsection (a);

''(B) efforts taken to revise the Physical Evaluation Board disability rating criteria and interim efforts to adjudicate cases before the revision of the criteria; and

''(C) results of the review and rerating of previously separated servicemembers.

''(2) The first report under paragraph (1) shall be submitted not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

''(i) PERSIAN GULF VETERAN.—For purposes of this section, a Persian Gulf veteran is an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf Conflict.

''SEC. 722. STUDIES OF HEALTH CONSEQUENCES OF MILITARY SERVICE OR EMPLOYMENT IN SOUTHWEST ASIA DURING THE PERSIAN GULF WAR.

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall conduct studies and administer grants for studies to determine—

''(1) the nature and causes of illnesses suffered by individuals as a consequence of service or employment by the United States in the Southwest Asia theater of operations during the Persian Gulf War; and

''(2) the appropriate treatment for those illnesses.

''(b) NATURE OF THE STUDIES.—(1) Studies under subsection (a)—

''(A) shall include consideration of the range of potential exposure of individuals to environmental, battlefield, and other conditions incident to service in the theater;

''(B) shall be conducted so as to provide assessments of both short-term and long-term effects to the health of individuals as a result of those exposures; and

''(C) shall include, at a minimum, the following types of studies:

''(i) An epidemiological study or studies on the incidence, prevalence, and nature of the illness and symptoms and the risk factors associated with symptoms or illnesses.

''(ii) Studies to determine the health consequences of the use of pyridostigmine bromide as a pretreatment antidote enhancer during the Persian Gulf War, alone or in combination with exposure to pesticides, environmental toxins, and other hazardous substances.

''(iii) Clinical research and other studies on the causes, possible transmission, and treatment of Persian Gulf-related illnesses.

''(2)(A) The first project carried out under paragraph (1)(C)(ii) shall be a retrospective study of members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War.

''(B) The second project carried out under paragraph (1)(C)(ii) shall consist of animal research and nonanimal research, including in vitro systems, as required, designed to determine whether the use of pyridostigmine bromide in combination with exposure to pesticides or other organophosphates, carbamates, or relevant chemicals will result in increased toxicity in animals and is likely to have a similar effect on humans.

''(c) INDIVIDUALS COVERED BY THE STUDIES.—Studies conducted pursuant to subsections [sic] (a) shall apply to the following individuals:

''(1) Individuals who served as members of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) Individuals who were civilian employees of the Department of Defense in that theater during that period.

''(3) To the extent appropriate, individuals who were employees of contractors of the Department of Defense in that theater during that period.

''(4) To the extent appropriate, the spouses and children of individuals described in paragraph (1).

''(d) PLAN FOR THE STUDIES.—(1) The Secretary of Defense shall prepare a coordinated plan for the studies to be conducted pursuant to subsection (a). The plan shall include plans and requirements for research grants in support of the studies. The Secretary shall submit the plan to the National Academy of Sciences for review and comment.

''(2) The plan for studies pursuant to subsection (a) shall be updated annually. The Secretary of Defense shall request an annual review by the National Academy of Science [Sciences] of the updated plan and study progress and results achieved during the preceding year.

''(3) The plan, and annual updates to the plan, shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(e) FUNDING.—(1) From the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690] for Defense-wide activities, the Secretary of Defense shall make available such funds as the Secretary considers necessary to support the studies conducted pursuant to subsection (a).

''(2) For each year in which activities continue in support of the studies conducted pursuant to subsection (a), the Secretary of Defense shall include in the budget request for the Department of Defense a request for such funds as the Secretary determines necessary to continue the activities during that fiscal year.

''(f) REPORTS.—(1) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress the coordinated plan for the studies to be conducted pursuant to subsection (a) and the results of the review of that plan by the National Academy of Sciences.

''(2) Not later than October 1 of each year through 1998, the Secretary shall submit to Congress a report on

the results of the studies conducted pursuant to subsection (a), plans for continuation of the studies, and the results of the annual review of the studies by the National Academy of Sciences.

''(3) Each report under this section shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(g) DEFINITION.—In this section, the term 'Persian Gulf War' has the meaning given such term in section 101 of title 38, United States Code.''

[For provisions establishing the Persian Gulf War Veterans Health Registry, provisions requiring a study by the Office of Technology Assessment of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry, provisions relating to an agreement with the National Academy of Sciences for review of health consequences of service during the Persian Gulf War, and coordination of government activities on health-related research on the Persian Gulf War, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

FUNDING OF FISHER HOUSES ASSOCIATED WITH ARMY MEDICAL TREATMENT FACILITIES

Pub. L. 103–335, title VIII, § 8017, Sept. 30, 1994, 108 Stat. 2620, provided that: ''Notwithstanding any other provision of law, during the current fiscal year and hereafter, proceeds from the investment of the Fisher House Investment Trust Fund will be used to support the operation and maintenance of Fisher Houses associated with Army medical treatment facilities.''

MENTAL HEALTH EVALUATIONS OF MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. A, title V, § 546(a)–(h), Oct. 23, 1992, 106 Stat. 2416–2419, directed Secretary of Defense, not later than 180 days after Oct. 23, 1992, to revise applicable regulations to incorporate certain requirements with respect to mental health evaluations of members of Armed Forces, including requirements relating to procedures for outpatient and inpatient evaluations, rights of members, additional rights of members and procedures for emergency or involuntary inpatient evaluations, and prohibition against use of referrals for mental health evaluations to retaliate against whistleblowers, and directed Secretary to submit to Committees on Armed Services of Senate and House of Representatives a report describing process of preparing regulations.

STUDY ON RISK-SHARING CONTRACTS FOR HEALTH CARE

Pub. L. 102–484, div. A, title VII, § 725, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense, in consultation with Secretary of Health and Human Services, not later than 18 months after Oct. 23, 1992, to carry out a study of the feasibility and advisability of entering into risk-sharing contracts with eligible organizations described in 42 U.S.C. 1395mm(b) to furnish health care services to persons entitled to health care in a facility of a uniformed service under section 1074(b) or 1076(b) of this title, to develop a plan for the entry into contracts in accordance with the Secretary's determinations under the study, and to submit to Congress a report describing the results of the study and containing any plan developed.

REGISTRY OF MEMBERS OF ARMED FORCES SERVING IN OPERATION DESERT STORM

Pub. L. 102–190, div. A, title VII, § 734, Dec. 5, 1991, 105 Stat. 1411, as amended by Pub. L. 102–585, title VII, § 704, Nov. 4, 1992, 106 Stat. 4977, provided that:

''(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

''(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

''(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

''(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

''(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

''(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

''(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.

''(c) REPORTING REQUIREMENT RELATING TO EXPOSURE STUDIES.—The Secretary shall submit to Congress each year, at or about the time that the President's budget is submitted that year under section 1105 of title 31, United States Code, a report regarding—

''(1) the results of all on-going studies on the members referred to in subsection (a)(1) to determine the health consequences (including any short- or long-term consequences) of the exposure of such members to the fumes of burning oil; and

''(2) the need for additional studies relating to the exposure of such members to such fumes.

''(d) MEDICAL EXAMINATION.—Upon the request of any member listed in the Registry pursuant to subsection (a)(1), the Secretary of the military department concerned shall, if medically appropriate, furnish a pulmonary function examination and chest x-ray to such person.

''(e) EFFECTIVE DATE.—The Secretary shall establish the Registry not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'Operation Desert Storm' has the meaning given such term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 105 Stat. 77; 10 U.S.C. 101 note).

''(2) The term 'Persian Gulf conflict' has the meaning given such term in section 3(3) of such Act.''

[For provisions relating to the Persian Gulf War Veterans Health Registry, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

ADVISORY COMMITTEE ON MENTAL HEALTH EVALUATION PROTECTIONS

Section 554 of Pub. L. 101–510, as amended by Pub. L. 102–484, div. A, title V, § 546(j)[(i)], Oct. 23, 1992, 106 Stat. 2419, directed Secretary of Defense, not later than 60 days after Nov. 5, 1990, to establish an advisory committee to develop and recommend to the Secretary, not later than 6 months after Nov. 5, 1990, regulations on procedural protections that should be afforded to any member of the Armed Forces who is referred by a commanding officer for a mental health evaluation by a mental health professional and directed Secretary, not later than 30 days after receipt of the report, to submit to Congress the report of the advisory committee, along with such additional comments and recommendations by the Secretary as the Secretary considers appropriate.

PROHIBITION ON FEE FOR OUTPATIENT CARE AT MILITARY MEDICAL TREATMENT FACILITIES

Section 721 of Pub. L. 101–189 provided that during fiscal years 1990 and 1991, the Secretary of Defense could

not impose a charge for the receipt of outpatient medical or dental care at a military medical treatment facility.

Similar provisions were contained in the following prior authorization act:

Pub. L. 100–180, div. A, title VII, §722, Dec. 4, 1987, 101 Stat. 1116.

RESTRICTION ON USE OF INFORMATION OBTAINED DURING CERTAIN EPIDEMIOLOGIC-ASSESSMENT INTERVIEWS

Pub. L. 99–661, div. A, title VII, §705(c), Nov. 14, 1986, 100 Stat. 3904, provided that:

''(1) Information obtained by the Department of Defense during or as a result of an epidemiologic-assessment interview with a serum-positive member of the Armed Forces may not be used to support any adverse personnel action against the member.

''(2) For purposes of paragraph (1):

''(A) The term 'epidemiologic-assessment interview' means questioning of a serum-positive member of the Armed Forces for purposes of medical treatment or counseling or for epidemiologic or statistical purposes.

''(B) The term 'serum-positive member of the Armed Forces' means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome.

''(C) The term 'adverse personnel action' includes—

''(i) a court-martial;

''(ii) non-judicial punishment;

''(iii) involuntary separation (other than for medical reasons);

''(iv) administrative or punitive reduction in grade;

''(v) denial of promotion;

''(vi) an unfavorable entry in a personnel record;

''(vii) a bar to reenlistment; and

''(viii) any other action considered by the Secretary concerned to be an adverse personnel action.''

STUDY OF MEDICAL NEEDS OF ARMED FORCES; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 92–129, title I, §101(c), Sept. 28, 1971, 85 Stat. 354, authorized Secretary of Defense and Secretary of Health, Education, and Welfare to conduct a joint study of means of meeting medical needs of Armed Forces through means requiring less dependence on Armed Forces medical personnel, giving consideration to providing medical care for military personnel and their dependents under contracts with clinics, hospitals, and individual members of the medical profession at or near military installations within and outside the United States. The study and recommendations were to be submitted to President and Congress no later than 6 months after Sept. 28, 1971.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1074d, 1075, 1078a, 1086, 1087, 1095, 1095a of this title; title 38 section 8111.

§1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less; or

(B) inactive-duty training.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less; or

(B) inactive-duty training.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member is not entitled to benefits under this section if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(Added Pub. L. 98–94, title X, §1012(a)(1), Sept. 24, 1983, 97 Stat. 664; amended Pub. L. 98–525, title VI, §631(a)(1), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 98–557, §19(4), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title XIII, §1303(a)(7), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–661, div. A, title VI, §604(a)(1), Nov. 14, 1986, 100 Stat. 3874.)

AMENDMENTS

1986—Pub. L. 99–661 amended section generally substituting ''active duty for a period of more than 30 days'' for ''active duty; injuries, diseases and illnesses incident to duty'' in section catchline and new text for prior text which read as follows:

''(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

''(1) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on active duty for a period of 30 days or less, or while traveling to or from that duty.

''(2) Each member of the National Guard who contracts a disease or becomes ill in line of duty while on full-time National Guard duty, or while traveling to or from that duty.

''(3) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on inactive duty training under circumstances in which it is determined that the disease or illness was contracted or aggravated as an incident of that inactive duty training.

''(4) Each member of a uniformed service who incurs or aggravates an injury while traveling directly to or from the place at which he is to perform, or has performed, inactive duty training, unless the injury is incurred or aggravated as a result of the member's own gross negligence or misconduct.

''(b) A person described in subsection (a) is entitled to—

''(1) the medical and dental care appropriate for the treatment of his injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment; and

''(2) subsistence during hospitalization.''

1985—Subsec. (a). Pub. L. 99–145 substituted reference to the administering Secretaries, for references to Secretaries of Defense, Transportation, and Health and Human Services.

1984—Pub. L. 98–525 substituted ''Medical and dental care: members on duty other than active duty; injuries, diseases and illnesses incident to duty'' for ''Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training'' in section catchline.

Subsec. (a). Pub. L. 98–557, which directed the amendment of subsec. (a) by substituting ''administering Sec-

retaries'' for ''Secretary of Defense and the Secretary of Health and Human Services'', could not be executed in view of the prior amendment by Pub. L. 98–525.

Pub. L. 98–525 amended subsec. (a) generally, thereby authorizing the Secretary of Transportation to participate in issuance of joint regulations, adding pars. (1) to (3), and incorporating existing provisions in par. (4).

Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, thereby including treatment of diseases or illnesses.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 604(g) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section, sections 1076, 1086, 1204–1206, 1475, 1476, 1481, 3723, and 8723 of this title, and sections 204 and 206 of Title 37, Pay and Allowances of the Uniformed Services and repealing sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722 of this title and sections 318–321 of Title 32, National Guard] shall apply with respect to persons who, after the date of enactment of this Act [Nov. 14, 1986], incur or aggravate an injury, illness, or disease or die.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 631(c) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section and section 6148 of this title] shall apply only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after September 30, 1984.''

EFFECTIVE DATE

Section 1012(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 204 of Title 37, Pay and Allowances of the Uniformed Services] shall apply only in cases of injuries incurred or aggravated on or after the date of the enactment of this Act [Sept. 24, 1983].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1074d of this title; title 37 section 204.

§ 1074b. Transitional medical and dental care: members on active duty in support of contingency operations

(a) HEALTH CARE PROVIDED.—A member of the armed forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described in subsection (c) upon the release of the member from active duty in support of a contingency operation until the earlier of—

(1) 30 days after the date of the release of the member from active duty; or

(2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

(b) ELIGIBLE MEMBER DESCRIBED.—A member of the armed forces referred to in subsection (a) is a member who—

(1) is a member of a reserve component and is called or ordered to active duty in support of a contingency operation;

(2) is involuntarily retained on active duty under section 673c[1] of this title in support of a contingency operation; or

(3) voluntarily agrees to remain on active duty for a period of less than one year in support of a contingency operation.

(c) HEALTH CARE DESCRIBED.—The health care referred to in subsection (a) is—

(1) medical and dental care available under section 1076 of this title in the same manner as such care is available for a dependent described in subsection (a)(2) of that section; and

(2) health benefits contracted for under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(Added Pub. L. 102–190, div. A, title VI, § 640(a)(2), Dec. 5, 1991, 105 Stat. 1385.)

REFERENCES IN TEXT

Section 673c of this title, referred to in subsec. (b)(2), was renumbered section 12305 of this title by Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.

PRIOR PROVISIONS

A prior section 1074b was renumbered section 1074c of this title.

§ 1074c. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added Pub. L. 98–525, title XIV, § 1401(e)(2)(A), Oct. 19, 1984, 98 Stat. 2616, § 1074b; renumbered § 1074c, Pub. L. 102–190, div. A, title VI, § 640(a)(1), Dec. 5, 1991, 105 Stat. 1385.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8033], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, § 739, Dec. 8, 1983, 97 Stat. 1445.

Pub. L. 97–377, title I, § 101(c) [title VII, § 742], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, § 743, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, § 744, Dec. 15, 1980, 94 Stat. 3089.

AMENDMENTS

1991—Pub. L. 102–190 renumbered section 1074b of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1074d. Primary and preventive health care services for women

(a) SERVICES AVAILABLE.—Female members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care.

(b) DEFINITION.—In this section, the term ''primary and preventive health care services for women'' means health care services, including related counseling services, provided to women with respect to the following:

(1) Papanicolaou tests (pap smear).

(2) Breast examinations and mammography.

(3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.

[1] See References in Text note below.

(4) Infertility and sexually transmitted diseases, including prevention.

(5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.

(6) Physical or psychological conditions arising out of acts of sexual violence.

(7) Gynecological cancers.

(Added Pub. L. 103–160, div. A, title VII, § 701(a)(1), Nov. 30, 1993, 107 Stat. 1685.)

DEFENSE WOMEN'S HEALTH RESEARCH PROGRAM

Pub. L. 103–337, div. A, title II, § 241, Oct. 5, 1994, 108 Stat. 2701, provided that:

''(a) CONTINUATION OF PROGRAM.—The Secretary of Defense shall continue the Defense Women's Health Research Program established in fiscal year 1994 pursuant to the authority in section 251 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1606) [set out below]. The program shall continue to serve as the coordinating agent for multi-disciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces. The program also shall continue to coordinate with research supported by other Federal agencies that is aimed at improving the health of women.

''(b) PARTICIPATION BY ALL MILITARY DEPARTMENTS.—The Departments of the Army, Navy, and Air Force shall each participate in the activities under the program.

''(c) ARMY TO BE EXECUTIVE AGENT.—The Secretary of Defense shall designate the Secretary of the Army to be the executive agent for administering the program.

''(d) IMPLEMENTATION PLAN.—If the Secretary of Defense intends to change the plan for the implementation of the program previously submitted to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives], the amended plan shall be submitted to such committees before implementation.

''(e) PROGRAM ACTIVITIES.—The program shall include the following activities regarding health risks and health care for women in the Armed Forces:

''(1) The coordination and support activities described in section 251 of Public Law 103–160 [set out below].

''(2) Epidemiologic research regarding women deployed for military operations, including research on patterns of illness and injury, environmental and occupational hazards (including exposure to toxins), side-effects of pharmaceuticals used by women so deployed, psychological stress associated with military training, deployment, combat and other traumatic incidents, and other conditions of life, and human factor research regarding women so deployed.

''(3) Development of a data base to facilitate long-term research studies on issues related to the health of women in military service, and continued development and support of a women's health information clearinghouse to serve as an information resource for clinical, research, and policy issues affecting women in the Armed Forces.

''(4) Research on policies and standards issues, including research supporting the development of military standards related to training, operations, deployment, and retention and the relationship between such activities and factors affecting women's health.

''(5) Research on interventions having a potential for addressing conditions of military service that adversely affect the health of women in the Armed Forces.

''(f) FUNDING.—Of the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690], $40,000,000 shall be available for the Defense Women's Health Research Program referred to in subsection (a).''

Pub. L. 103–160, div. A, title II, § 251, Nov. 30, 1993, 107 Stat. 1606, provided that:

''(a) AUTHORITY TO ESTABLISH CENTER.—The Secretary of Defense may establish a Defense Women's Health Research Center (hereinafter in this section referred to as the 'Center') at an existing Department of Defense medical center to serve as the coordinating agent for multidisciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces. The Secretary shall determine whether or not to establish the Center not later than May 1, 1994. If established, the Center shall also coordinate with research supported by the Department of Health and Human Services and other agencies that is aimed at improving the health of women.

''(b) SUPPORT OF RESEARCH.—The Center shall support health research into matters relating to the service of women in the military, including the following matters:

''(1) Combat stress and trauma.

''(2) Exposure to toxins and other environmental hazards associated with military equipment.

''(3) Psychology related stress in warfare situations.

''(4) Mental health, including post-traumatic stress disorder and depression.

''(5) Human factor studies related to women in combat areas.

''(c) COMPETITION REQUIREMENT RELATING TO ESTABLISHMENT OF CENTER.—The Center may be established only pursuant to a competition among existing Department of Defense medical centers.

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall prepare a plan for the implementation of subsection (a). The plan shall be submitted to the Committees on Armed Services of the Senate and House of Representatives before May 1, 1994.

''(e) ACTIVITIES FOR FISCAL YEAR 1994.—During fiscal year 1994, the Center may address the following:

''(1) Program planning, infrastructure development, baseline information gathering, technology infusion, and connectivity.

''(2) Management and technical staffing.

''(3) Data base development of health issues related to service by women on active duty as compared to service by women in the National Guard or Reserves.

''(4) Research protocols, cohort development, health surveillance, and epidemiologic studies, to be developed in coordination with the Centers for Disease Control and the National Institutes of Health whenever possible.

''(f) FUNDING.—Of the funds authorized to be appropriated pursuant to section 201 [107 Stat. 1583], $20,000,000 shall be available for the establishment of the Center or for medical research at existing Department of Defense medical centers into matters relating to service by women in the military.

''(g) REPORT.—(1) If the Secretary of Defense determines not to establish a women's health center under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives, not later than May 1, 1994, a report on the plans of the Secretary for the use of the funds described in subsection (f).

''(2) If the Secretary determines to establish the Center, the Secretary shall, not less than 60 days before the establishment of the Center, submit to those committees a report describing the planned location for the Center and the competitive process used in the selection of that location.''

REPORT ON PROVISION OF PRIMARY AND PREVENTATIVE HEALTH CARE SERVICES FOR WOMEN

Section 735 of Pub. L. 103–160 provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall prepare a report evaluating the provision of primary and preventive health care services through military medical treatment facilities and the Civilian Health and Medical Program of the Uniformed Services

to female members of the uniformed services and female covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code.

''(b) CONTENTS.—The report required by subsection (a) shall contain the following:

''(1) A description of the number and types of health care providers who are providing health care services in military medical treatment facilities or through the Civilian Health and Medical Program of the Uniformed Services to female members and female covered beneficiaries.

''(2) A description of the health care programs implemented (or planned) by the administering Secretaries to assess the health needs of women or to meet the special health needs of women.

''(3) A description of the demographics of the population of female members and female covered beneficiaries and the leading categories of morbidity and mortality among such members and beneficiaries.

''(4) A description of any actions, including the use of special pays and incentives, undertaken by the Secretary during fiscal year 1993—

''(A) to ensure the retention of health care providers who are providing health care services to female members and female covered beneficiaries;

''(B) to recruit additional health care providers to provide such health care services; and

''(C) to replace departing health care providers who provided such health care services.

''(5) A description of any existing or proposed programs to encourage specialization of health care providers in fields related to primary and preventive health care services for women.

''(6) An assessment of any difficulties experienced by military medical treatment facilities or health care providers under the Civilian Health and Medical Program of the Uniformed Services in furnishing primary and preventive health care services for women and a description of the actions taken by the Secretary to resolve such difficulties.

''(7) A description of the actions taken by the Secretary to foster and encourage the expansion of research relating to health care issues of concern to female members of the uniformed services and female covered beneficiaries.

''(c) STUDY OF THE NEEDS OF FEMALE MEMBERS AND FEMALE COVERED BENEFICIARIES FOR HEALTH CARE SERVICES.—(1) As part of the report required by subsection (a), the Secretary shall conduct a study to determine the needs of female members of the uniformed services and female covered beneficiaries for health care services, including primary and preventive health care services for women.

''(2) The study shall examine the health care needs of current female members and female covered beneficiaries and anticipated future female members and female covered beneficiaries, taking into consideration the anticipated size and composition of the Armed Forces in the year 2000 and the demographics of the entire United States.

''(d) SUBMISSION AND REVISION.—The Secretary shall submit to Congress the report required by subsection (a) not later than October 1, 1994. The Secretary shall revise and resubmit the report to Congress not later than October 1, 1999.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'primary and preventive health care services for women' has the meaning given that term in section 1074d(b) of title 10, United States Code, as added by section 701(a)).

''(2) The term 'covered beneficiary' has the meaning given that term in section 1072(5) of such title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1077 of this title.

§ 1075. Officers and certain enlisted members: subsistence charges

When an officer or former officer of a uniformed service, or an enlisted member of a uniformed service entitled to basic allowance for subsistence, is hospitalized under section 1074 of this title, he shall pay an amount equal to the part of the charge prescribed under section 1078 of this title that is attributable to subsistence. An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may not be so charged.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 97–22, § 10(b)(2), July 10, 1981, 95 Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1075	37:422.	June 7, 1956, ch. 374, § 302, 70 Stat. 254.

The word ''officer'' is substituted for the words ''Commissioned officers and warrant officers'' to reflect section 101(14) of this title. The words ''or former officer'' are substituted for the words ''and retired''. The word ''active'' is omitted as surplusage.

PRIOR PROVISIONS

A prior section 1075, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to post card requests for absentee ballots, and for printing and transmission thereof, and was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1981—Pub. L. 97–22 inserted '', or an enlisted member of a uniformed service entitled to basic allowance for subsistence,'' after ''officer of a uniformed service''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1096 of this title.

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service—

(A) who is on active duty for a period of more than 30 days or who died while on that duty; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death (A) would have been eligible for retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act) but for the fact that he was under 60 years of age, and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60. A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), if an abused dependent of a former member of a uniformed service described in paragraph (4) needs medical or dental care for an injury or illness resulting from abuse by the member, the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.

(2) Subject to paragraph (3), upon request of any dependent of a former member of a uniformed service punished for an abuse described in paragraph (4), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

(3) Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

(A) shall be limited to the health care prescribed by section 1077 of this title;

(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff; and

(C) shall terminate one year after the date on which the former member was discharged or dismissed from a uniformed service as described in paragraph (4).

(4)(A) A former member of a uniformed service referred to in paragraph (1) is a member who—

(i) received a dishonorable or bad-conduct discharge or was dismissed from a uniformed service as a result of a court-martial conviction for an offense, under either military or civil law, involving abuse of a dependent of the member; or

(ii) was administratively discharged from a uniformed service as a result of such an offense.

(B) A determination of whether an offense involved abuse of a dependent of the member shall be made in accordance with regulations prescribed by the administering Secretary for such uniformed service.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, § 2(3), Sept. 30, 1966, 80 Stat. 862; Pub. L. 95–397, title III, § 301, Sept. 30, 1978, 92 Stat. 849; Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–252, title X, § 1004(b), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–557, § 19(5), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title VI, § 652(a), Nov. 8, 1985, 99 Stat. 656; Pub. L. 99–661, div. A, title VI, §§ 604(f)(1)(C), 652(c), Nov. 14, 1986, 100 Stat. 3877, 3889; Pub. L. 100–456, div. A, title VI, § 651(a), Sept. 29, 1988, 102 Stat. 1990; Pub. L. 101–189, div. A, title VI, § 653(a)(4), title VII, § 731(c)(1), Nov. 29, 1989, 103 Stat. 1462, 1482; Pub. L. 103–337, div. A, title VII, §§ 704(a), (b), title XVI, § 1671(c)(7)(A), Oct. 5, 1994, 108 Stat. 2798, 2799, 3014.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1076(a)	37:402(a)(2) (as applicable to 37:403(a)).	June 7, 1956, ch. 374, §§ 102(a)(2) (as applicable to § 103(a)), (3) (as applicable to § 301(c)), 103(a), (b), 301(c), 70 Stat. 250, 251, 253.
1076(b).	37:403(a) (1st sentence). 37:402(a)(3) (as applicable to 37:421(c)). 37:421(c) (less last 28 words).	
1076(c)	37:403(a) (less 1st sentence). 37:421(c) (last 28 words).	
1076(d)	37:403(b).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations dependents are entitled to dental care under 37:403(h)(4), restated as section 1077 of this title.

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'' are omitted as surplusage, since it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'' to reflect section 101(22) and (23) of this title.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active duty as defined in section 901(b) of title 50'' to reflect section 101(22) of this title. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

In subsection (c), 37:421(c) (last 28 words) is omitted as unnecessary since this subsection and section 1077 of this title are written so as to apply to subsection (b) as well as subsection (a).

In subsection (d), the words ''because the facility concerned is that of a uniformed service other than that of the member'' is substituted for the words ''because of the service affiliation of the service member''.

REFERENCES IN TEXT

Chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in subsec. (b)(2)(A), means chapter 67 (§ 1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§ 1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

PRIOR PROVISIONS

A prior section 1076, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which related to use of post cards, waiver of registration, and voting by discharged persons, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–337, § 1671(c)(7)(A), substituted ''under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''under chapter 67 of this title''.

Subsec. (e)(1). Pub. L. 103–337, § 704(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''Subject to paragraph (3), if—

''(A) a member of a uniformed service receives a dishonorable or bad-conduct discharge or is dismissed from a uniformed service as a result of a court-martial conviction for an offense involving abuse of a dependent of the member, as determined in accordance with regulations prescribed by the administering Secretary for such uniformed service; and

''(B) the abused dependent needs medical or dental care for an injury or illness resulting from the abuse,

the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(2). Pub. L. 103–337, § 704(b)(1), (2), inserted ''former'' before ''member'' and substituted ''paragraph (4)'' for ''paragraph (1)(A)''.

Subsec. (e)(3). Pub. L. 103–337, § 704(b)(1), (3), inserted ''former'' before ''member'' in introductory provisions and in subpar. (C) and substituted ''was'' for ''is'' and ''paragraph (4)'' for ''paragraph (1)(A)'' in subpar. (C).

Subsec. (e)(4). Pub. L. 103–337, § 704(a)(2), added par. (4).

1989—Subsec. (e)(3)(C). Pub. L. 101–189, § 653(a)(4), substituted ''one year'' for ''1 year''.

Subsec. (f). Pub. L. 101–189, § 731(c)(1), struck out subsec. (f) which read as follows:

''(1) A person described in paragraph (2) shall be considered a dependent for purposes of this section for a period of one year after the date of the person's final decree of divorce, dissolution, or annulment. In addition, if such a person purchases a conversion health policy within the one-year period referred to in the preceding sentence, such person shall be entitled, upon request, to medical and dental care prescribed by section 1077 of this title for a period of one year after the purchase of the policy for any condition of the person that existed on the date on which coverage under the policy begins and for which care is not provided under that policy.

''(2) A person referred to in paragraph (1) is a person who would qualify as a dependent under section 1072(2)(G) but for the fact that the person's final decree of divorce, dissolution, or annulment is dated on or after April 1, 1985.

''(3) In this subsection, the term 'conversion health policy' means a health insurance plan with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of persons described in paragraph (2).''

1988—Subsec. (f). Pub. L. 100–456 added subsec. (f).

1986—Subsec. (a)(2)(B). Pub. L. 99–661, § 604(f)(1)(C), inserted reference to disease.

Subsec. (e). Pub. L. 99–661, § 652(c), added subsec. (e).

1985—Subsec. (a). Pub. L. 99–145 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.''

1984—Subsecs. (b), (d). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services.

1982—Subsec. (b). Pub. L. 97–252 provided for medical and dental care, for a dependent described in section 1072(2)(F) of this title, pursuant to clause (2) without regard to subclause (B) of such clause.

1980—Subsecs. (b), (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (b). Pub. L. 95–397 substituted ''Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member-'' for ''Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff'', added pars. (1), (2), and provisions following par. (2) relating to medical and dental care on request in facilities of the uniformed services subject to the availability of space, facilities and capabilities of staff, and excepting from such care provision a dependent of a member or former member until such member or former member would have attained age 60.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is, or was at the time of his death, entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(A) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(1) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d)

of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 651(d) of Pub. L. 100–456 provided that: ''Section 1076(f) of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 29, 1988] or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in such section), whichever is later. Such section shall apply to persons whose decree of divorce, dissolution, or annulment becomes final after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 604 of Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

Section 652(e)(3) of Pub. L. 99–661 provided that: ''The amendment made by subsection (c) [amending this section] shall apply only with respect to dependents who request medical or dental care on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 652(c) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply only with respect to dependents of members of the uniformed services whose deaths occur after September 30, 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302 of Pub. L. 95–397 provided that: ''The amendment made by section 301 [amending this section] shall become effective on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later.''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

Pub. L. 102–25, title III, §313, Apr. 6, 1991, 105 Stat. 85, provided that:

''(a) HEALTH CARE PROVIDED.—A member of the Armed Forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described in subsection (c) upon the release of the member from active duty in connection with Operation Desert Storm until the earlier of—

''(1) 30 days after the date of the release of the member from active duty; or

''(2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

''(b) ELIGIBLE MEMBER DESCRIBED.—A member of the Armed Forces referred to in subsection (a) is a member who—

''(1) is a member of a reserve component of the Armed Forces and is called or ordered to active duty under chapter 39 of title 10, United States Code, in connection with Operation Desert Storm;

''(2) is involuntarily retained on active duty under section 673c [now 12305] of title 10, United States Code, in connection with Operation Desert Storm; or

''(3) voluntarily agrees to remain on active duty for a period of less than one year in connection with Operation Desert Storm.

''(c) HEALTH CARE DESCRIBED.—The health care referred to in subsection (a) is—

''(1) medical and dental care under section 1076 of title 10, United States Code, in the same manner as a dependent described in subsection (a)(2) of that section; and

''(2) health benefits contracted under the authority of section 1079(a) of that title and subject to the same rates and conditions as apply to persons covered under that section.

''(d) DEPENDENT DEFINED.—For purposes of this section, the term 'dependent' has the meaning given that term in section 1072(2) of title 10, United States Code.''

DEPENDENT; QUALIFICATION AS; TRANSITION

Section 651(c) of Pub. L. 100–456 provided that: ''Any person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 [Pub. L. 98–525, formerly set out as a note under section 1072 of this title], as in effect before its repeal by subsection (b), shall remain qualified as a dependent as specified in that section and shall become eligible for benefits in accordance with section 1076(f) of title 10, United States Code (as added by subsection (a)), when no longer qualified as a dependent pursuant to such section 645(c).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1074b, 1077, 1078, 1079, 1080, 1086, 1086a, 1087, 1095a, 1145 of this title.

§1076a. Dependents' dental program

(a) AUTHORITY TO ESTABLISH PLANS.—(1) The Secretary of Defense may establish basic dental benefits plans for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days. Any plan under this section shall provide for voluntary enrollment of participants and shall include provisions for premium-sharing between the Department of Defense and members enrolling in the program.

(2) A plan under this section shall be administered under regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries.

(b) PREMIUMS.—(1) Members enrolling in a dental benefits plan established under subsection (a) shall be required to pay a share of the member's premium.

(2) A member enrolled in a basic dental benefits plan shall pay a premium of not more than $20 per month for the member and the family of the member.

(3) The Secretary of Defense may reduce the monthly premium required to be paid under paragraph (2) in the case of enlisted members in pay grade E–1, E–2, E–3, or E–4 if the Secretary determines that such a reduction is appropriate to assist such members to participate in a dental benefits plan established under subsection (a). The reduction in the amount of the premium may not exceed $10 per month.

(c) DEDUCTION OF PREMIUM FROM BASIC PAY.—A member's share of the premium for a plan established under subsection (a) shall be paid by deductions from the basic pay of the member.

(d) BENEFITS AVAILABLE UNDER PLANS.—A basic dental benefits plan established under subsection (a) may provide the following benefits:

(1) Diagnostic, oral examination, and preventative services and palliative emergency care.

(2) Basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs.

(3) Orthodontic services, crowns, gold fillings, bridges, complete or partial dentures, and such other services as the Secretary of Defense considers to be appropriate.

(e) COPAYMENTS.—A member whose eligible dependent receives care under a basic dental benefits plan shall—

(1) pay no charge for care described in subsection (d)(1);

(2) pay 20 percent of the charges for care described in subsection (d)(2); and

(3) pay a percentage of the charges for care described in subsection (d)(3) that is determined appropriate by the Secretary of Defense, after consultation with the other administering Secretaries.

(f) TRANSFER OF MEMBERS.—If a member who is enrolled in a plan established under this section is transferred to a duty station where dental care is provided to the member's eligible dependents under a program other than a plan established under this section, the member may discontinue participation under the plan established under this section. If the member is later transferred to a station where dental care is not provided to such member's eligible dependents except under a plan established under this section, the member may re-enroll in such a plan.

(g) AUTHORITY SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.

(h) CARE OUTSIDE THE UNITED STATES.—The Secretary may exercise the authority provided under subsection (a) to establish basic dental benefits plans for the provision of dental benefits outside the United States for the eligible dependents of members of the uniformed services accompanying the members on permanent assignments to duty outside the United States.

(i) ELIGIBLE DEPENDENT DEFINED.—(1) In this section, the term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) The term includes a dependent described in such subparagraphs of a member who dies while on active duty for a period of more than 30 days if the dependent is enrolled on the date of the death of the member in a dental benefits plan established under subsection (a), except that the term does not include the dependent after the end of the one-year period beginning on the date of the member's death. The Secretary of Defense may waive (in whole or in part) any requirements of the plan as the Secretary determines necessary for the effective administration of the plan for a dependent covered by this paragraph.

(Added Pub. L. 99–145, title VI, § 651(a)(1), Nov. 8, 1985, 99 Stat. 655; amended Pub. L. 99–661, div. A, title VII, § 707(a), (b), Nov. 14, 1986, 100 Stat. 3905; Pub. L. 102–190, div. A, title VII, § 701, Dec. 5, 1991, 105 Stat. 1399; Pub. L. 102–484, div. A, title VII, § 701(a)–(e), Oct. 23, 1992, 106 Stat. 2430; Pub. L. 103–337, div. A, title VII, §§ 702(b), 703(a), 707(b), Oct. 5, 1994, 108 Stat. 2797, 2798, 2800.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 702(b)(1), substituted ''eligible dependents'' for ''spouses and children (as described in section 1072(2)(D) of this title)''.

Subsec. (e). Pub. L. 103–337, § 702(b)(2), substituted ''eligible dependent'' for ''spouse or child''.

Subsec. (f). Pub. L. 103–337, § 702(b)(3), substituted ''eligible dependents'' for ''spouse or children'' in two places.

Subsec. (h). Pub. L. 103–337, § 703(a)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 103–337, § 702(b)(4), added subsec. (h).

Subsec. (i). Pub. L. 103–337, § 707(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–337, § 703(a)(1), redesignated subsec. (h) as (i).

1992—Subsec. (a)(1). Pub. L. 102–484, § 701(a)(1), struck out ''and supplemental'' after ''may establish basic'' and struck out at end ''A member may not enroll in a supplemental dental benefits plan unless the member is also a member of a basic dental benefits plan.''

Subsec. (b)(2). Pub. L. 102–484, § 701(b)(1), substituted ''$20'' for ''$10''.

Subsec. (b)(3). Pub. L. 102–484, § 701(a)(2), (b)(2), added par. (3) and struck out former par. (3) which read as follows: ''A member enrolled in a supplemental dental benefits plan shall pay a supplemental monthly premium of not more than $15 for the member and the family of the member. The supplemental monthly premium shall be in addition to the premium payable under paragraph (2) for the member's basic dental benefits plan.''

Subsec. (d). Pub. L. 102–484, § 701(a)(3), (c), struck out ''(1)'' before ''A basic dental'', struck out ''only'' before ''the following benefits'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, added par. (3), and struck out former par. (2) which read as follows: ''In addition to the benefits available under a basic dental benefits plan, a supplemental dental benefits plan established under subsection (a) may provide such dental care benefits as the Secretary of Defense, after consultation with the other administering Secretaries, considers to be appropriate.''

Subsec. (e). Pub. L. 102–484, § 701(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''COPAYMENTS.—(1) A member whose spouse or child receives care under a basic dental benefits plan shall—

''(A) pay no charge for care described in subsection (d)(1)(A); and

''(B) pay 20 percent of the charges for care described in subsection (d)(1)(B).

''(2) A supplemental dental benefits plan may require a member enrolled in that plan to pay not more than 50 percent of the charges for orthodontic services, crowns, gold fillings, bridges, or complete or partial dentures that are received by the spouse or a child of the member, are covered by that plan, and are not covered by the member's basic dental benefits plan.''

Subsec. (h). Pub. L. 102–484, § 701(e), struck out subsec. (h) which read as follows: ''LIMITATIONS ON EXPENDITURES.—The Secretary of Defense may not spend more than $105,000,000 (in fiscal year 1986 dollars) for a plan under this section during any fiscal year.''

1991—Subsec. (a). Pub. L. 102–190, § 701(e)(1), inserted heading.

Subsec. (a)(1). Pub. L. 102–190, § 701(a), substituted ''basic and supplemental dental benefits plans'' for

''dental benefit plans'' in first sentence and inserted at end ''A member may not enroll in a supplemental dental benefits plan unless the member is also a member of a basic dental benefits plan.''

Subsec. (b). Pub. L. 102–190, §701(c)(1), inserted heading.

Subsec. (b)(1). Pub. L. 102–190, §701(c)(2), substituted ''benefits'' for ''benefit''.

Subsec. (b)(2). Pub. L. 102–190, §701(c)(3), substituted ''a basic dental benefits plan'' for ''a plan under this section''.

Subsec. (b)(3). Pub. L. 102–190, §701(c)(4), added par. (3).

Subsec. (c). Pub. L. 102–190, §701(e)(2), inserted heading.

Subsec. (d). Pub. L. 102–190, §701(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The dental benefits provided under such a plan may not include a benefit other than—

''(1) diagnostic, oral examination, and preventive services and palliative emergency care; and

''(2) basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs.''

Subsec. (e). Pub. L. 102–190, §701(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Any such plan shall provide that a member whose spouse or child receives care under a plan established under this section—

''(1) may not be required to pay for any charge for care described in subsection (d)(1); and

''(2) shall be required to pay 20 percent of the charges for care described in subsection (d)(2).''

Subsecs. (f) to (h). Pub. L. 102–190, §701(e)(3)–(5), inserted headings.

1986—Subsec. (b)(2). Pub. L. 99–661, §707(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense shall establish the amount of the premium to be paid by a member enrolled in a plan under this section.''

Subsec. (h). Pub. L. 99–661, §707(b), added subsec. (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 707(c) of Pub. L. 103–337 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1079 of this title] shall apply with respect to the dependents described in such amendments of a member of a uniformed service who dies on or after October 1, 1993, while on active duty for a period of more than 30 days.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 701(g) of Pub. L. 102–484 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992], except that—

''(1) the $10 per month premium in effect under subsection (b)(2) of section 1076a of title 10, United States Code, on the day before the date of the enactment of this Act shall continue to apply until April 1, 1993, to members enrolled in a basic dental benefits plan under such section; and

''(2) the Secretary of Defense may not include the benefits authorized under subsection (d)(3) of such section, as added by subsection (c), in a basic dental benefits plan under such section until April 1, 1993.''

EFFECTIVE DATE

Section 651(c) of Pub. L. 99–145 provided that: ''The Secretary of Defense may not enter into a contract under section 1076a of title 10, United States Code, as added by subsection (a), or otherwise obligate funds under that section before September 30, 1986.''

AUTHORIZATION TO EXPAND ENROLLMENT IN DEPENDENTS' DENTAL PROGRAM TO CERTAIN MEMBERS RETURNING FROM OVERSEAS ASSIGNMENTS

Pub. L. 103–160, div. A, title VII, §703, Nov. 30, 1993, 107 Stat. 1687, provided that:

''(a) AUTHORITY TO EXPAND PROGRAM.—After March 31, 1994, the Secretary of Defense may expand the dependents' dental program established under section 1076a of title 10, United States Code, to permit a member of the uniformed services described in subsection (b) to enroll dependents described in subsection (a) of such section in a dental benefits plan under the program without regard to the length of the uncompleted portion of the member's period of obligated service.

''(b) COVERED MEMBERS.—A member referred to in subsection (a) is a member of the uniformed services who is—

''(1) on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code); and

''(2) reassigned from a permanent duty station where a dental benefits plan under the dependents' dental program is not available to a permanent duty station where such a plan is available.

''(c) REPORT ON ADVISABILITY OF EXPANSION.—Not later than February 28, 1994, the Secretary shall submit to Congress a report evaluating the advisability of expanding the enrollment eligibility of members of the uniformed services in the dependents' dental program in the manner authorized in subsection (a). The report shall include an analysis of the cost implications for such an expansion to the Federal Government, beneficiaries under the dependents' dental program, and contractors under the program.

''(d) NOTIFICATION OF EXERCISE OF AUTHORITY.—The Secretary shall notify Congress of any decision to expand the enrollment eligibility of dependents in the dependents' dental program as provided in subsection (a) not later than 30 days before such expansion takes effect.''

PROGRAM OF IMPROVED DENTAL BENEFITS FOR DEPENDENTS

Section 701(f) of Pub. L. 102–484 provided that:

''(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall devise and implement a program for the improvement of the provision of dental benefits to dependents of members of the Armed Forces under section 1076a of title 10, United States Code.

''(2) For purposes of this subsection, the term 'administering Secretaries' has the meaning given such term in section 1072(3) of title 10, United States Code.

''(3) Of the funds appropriated pursuant to the authorization of appropriations in section 301 [106 Stat. 2360], $50,000,000 shall be available to the Secretary of Defense for carrying out paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1077 of this title.

§1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.

(2) Outpatient care.

(3) Drugs.

(4) Treatment of medical and surgical conditions.

(5) Treatment of nervous, mental, and chronic conditions.

(6) Treatment of contagious diseases.

(7) Physical examinations, including eye examinations, and immunizations.

(8) Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant.

(9) Diagnostic tests and services, including laboratory and X-ray examinations.

(10) Dental care.

(11) Ambulance service and home calls when medically necessary.

(12) Durable equipment, such as wheelchairs, iron lungs, and hospital beds may be provided on a loan basis.

(13) Primary and preventive health care services for women (as defined in section 1074d(b) of this title).

(b) The following types of health care may not be provided under section 1076 of this title:

(1) Domiciliary or custodial care.

(2) Prosthetic devices, hearing aids, orthopedic footwear, and spectacles except that—

(A) outside the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States, and

(B) artificial limbs, voice prostheses, and artificial eyes may be provided.

(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(c) A dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care, dental care provided outside the United States, and dental care that is not covered by such plan.

(d)(1) Notwithstanding subsection (b)(1), hospice care may be provided under section 1076 of this title in facilities of the uniformed services to a terminally ill patient who chooses (pursuant to regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries) to receive hospice care rather than continuing hospitalization or other health care services for treatment of the patient's terminal illness.

(2) In this section, the term ''hospice care'' means the items and services described in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, §2(4), Sept. 30, 1966, 80 Stat. 863; Pub. L. 98–525, title VI, §633(a), title XIV, §§1401(e)(3), 1405(22), Oct. 19, 1984, 98 Stat. 2544, 2617, 2623; Pub. L. 99–145, title VI, §651(b), Nov. 8, 1985, 99 Stat. 656; Pub. L. 102–190, div. A, title VII, §§702(a), 703, Dec. 5, 1991, 105 Stat. 1400, 1401; Pub. L. 103–160, div. A, title VII, §701(b), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, §§703(b), 705, Oct. 5, 1994, 108 Stat. 2798, 2799.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1077(a)	37:403(f).	June 7, 1956, ch. 374, §103(f), (g), (h), 70 Stat. 251, 252.
1077(b)	37:403(g).	
1077(c)	37:403(h) (less clause (4)).	
1077(d)	37:403(h) (clause (4)).	

In subsection (a), clause (6) is inserted to reflect subsection (b).

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (b)(3) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8045], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, §752, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §756], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, §759, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, §763, Dec. 15, 1980, 94 Stat. 3092.

Pub. L. 96–154, title VII, §769, Dec. 21, 1979, 93 Stat. 1163.

A prior section 1077, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which related to distribution of ballots, envelopes, and voting instructions, was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (b)(2)(B). Pub. L. 103–337, §705, inserted '', voice prostheses,'' after ''artificial limbs''.

Subsec. (c). Pub. L. 103–337, §703(b), substituted '', dental care provided outside the United States, and dental care'' for ''and care''.

1993—Subsec. (a)(13). Pub. L. 103–160 added cl. (13).

1991—Subsec. (a)(8). Pub. L. 102–190, §703, inserted before period at end '', including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant''.

Subsec. (d). Pub. L. 102–190, §702(a), added subsec. (d).

1985—Subsec. (c). Pub. L. 99–145 added subsec. (c).

1984—Pub. L. 98–525, §1405(22), substituted a colon for the semicolon in section catchline.

Subsec. (a)(10). Pub. L. 98–525, §633(a)(1), added cl. (10). Former cl. (10) ''Emergency dental care worldwide.'' was struck out.

Subsec. (a)(11). Pub. L. 98–525, §633(a)(1), redesignated cl. (13) as (11). Former cl. (11) ''Routine dental care outside the United States and at stations in the United States where adequate civilian facilities are unavailable.'' was struck out.

Subsec. (a)(12). Pub. L. 98–525, §633(a)(1), redesignated cl. (14) as (12). Former cl. (12) ''Dental care worldwide as a necessary adjunct of medical, surgical, or preventive treatment.'' was struck out.

Subsec. (a)(13), (14). Pub. L. 98–525, §633(a)(2), redesignated cls. (13) and (14) as cls. (11) and (12), respectively.

Subsec. (b)(3). Pub. L. 98–525, §1401(e)(3), added par. (3).

1966—Pub. L. 89–614 authorized an improved health benefits program for dependents of active duty members of the uniformed services in facilities of such services, expanding health care to be provided to include: hospitalization, outpatient care, and drugs in clauses (1) to (3) of subsec. (a) (hospitalization being limited by former subsec. (b) to treatment of nervous or mental disturbances or chronic diseases or for elective medical and surgical treatment to one year period in special cases); treatment of mental and surgical conditions in clause (4) minus acute condition restriction of former subsec. (a)(2); treatment of nervous, mental, and chronic conditions in clause (5) formerly restricted as stated above; clause (6) reenactment of former subsec. (a)(3); physical, including eye, examinations in clause (7) reenacting former subsec. (a)(4) immunization provisions; clause (8) reenactment of former subsec. (a)(5); diagnostic tests and services, including laboratory and X-ray examinations (diagnosis being covered in former subsec. (a)(1)); dental care provisions in clauses (10) to (12) (provided in former subsec. (d)) as (1) emergency care to relieve pain and suffering, but not including permanent restorative work or dental prosthesis, (2) care as a necessary adjunct to medical or surgical treatment, and care outside the United States, and in remote areas inside the United States, where adequate civilian facilities are unavailable; ambulance service and home calls in clause 13 (covering former subsec. (c)(2), (3)); durable equipment on loan basis in clause

(14); and to exclude in subsec. (b)(1) (incorporating last sentence of former subsec. (b)) custodial care; subsec. (b)(2)(A) reenactment of former subsec. (e)(1); and permitted in subsec. (b)(2)(B) artificial limbs and eyes to be provided.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 633(b) of Pub. L. 98–525 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1985.''

Amendment by section 1401(e)(3) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

OBSTETRICAL CARE FACILITIES

Pub. L. 89–188, title VI, §610, Sept. 16, 1965, 79 Stat. 818, which required that military hospitals in the United States and its possessions be constructed so as to include facilities for obstetrical care, was repealed by Pub. L. 97–214, §7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1076, 1079, 1080, 1086 of this title.

§1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the other administering Secretaries, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the other administering Secretaries, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, §2(5), Sept. 30, 1966, 80 Stat. 863; Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(6), Oct. 30, 1984, 98 Stat. 2869.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1078(a)	37:403(c).	June 7, 1956, ch. 374, §103(c)(d), (e), 70 Stat. 251.
1078(b)	37:403(d).	
1078(c)	37:403(e).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations, dependents are entitled to dental care under 37:403(h)(4), restated as section 1077(d) of this title.

In subsection (b), the word ''special'' is omitted as surplusage.

PRIOR PROVISIONS

A prior section 1078, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which prescribed instructions for marking ballots, was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1966—Subsec. (a). Pub. L. 89–614 substituted ''The charge or charges prescribed shall be applied equally to all classes of dependents'' for ''Charges shall be the same for all dependents''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1079, 1080, 1086, 1096 of this title; title 42 section 253a.

§1078a. Continued health benefits coverage

(a) PROVISION OF CONTINUED HEALTH COVERAGE.—Beginning on October 1, 1994, the Secretary of Defense shall implement and carry out a program of continued health benefits coverage in accordance with this section to provide persons described in subsection (b) with temporary health benefits comparable to the health benefits provided for former civilian employees of the Federal Government and other persons under section 8905a of title 5.

(b) ELIGIBLE PERSONS.—The persons referred to in subsection (a) are the following:

(1) A member of the armed forces who—

(A) is discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is entitled to medical and dental care under section 1074(a) of this title (except in the case of a member discharged or released from full-time National Guard duty); and

(C) after that discharge or release and any period of transitional health care provided under section 1145(a) of this title, would not otherwise be eligible for any benefits under this chapter.

(2) A person who—

(A) ceases to meet the requirements for being considered an unmarried dependent child of a member or former member of the armed forces under section 1072(2)(D) of this title or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title;

(B) on the day before ceasing to meet those requirements, was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) would not otherwise be eligible for any benefits under this chapter.

(3) A person who—

(A) is an unremarried former spouse of a member or former member of the armed forces; and

(B) on the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072(2) of this title or ends a one-year period of dependency under subparagraph (H) of such section.

(c) NOTIFICATION OF ELIGIBILITY.—(1) The Secretary of Defense shall prescribe regulations to provide for persons described in subsection (b) to be notified of eligibility to receive health benefits under this section.

(2) In the case of a member who becomes (or will become) eligible for continued coverage under subsection (b)(1), the regulations shall provide for the Secretary concerned to notify the member of the member's rights under this section as part of preseparation counseling conducted under section 1142 of this title or any other provision of other law.

(3) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the regulations shall provide that—

(A) the member or former member may submit to the Secretary concerned a written notice of the dependent's change in status (including the dependent's name, address, and such other information as the Secretary of Defense may require); and

(B) the Secretary concerned shall, within 14 days after receiving that notice, inform the dependent of the dependent's rights under this section.

(4) In the case of a former spouse of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the regulations shall provide appropriate notification provisions and a 60-day election period under subsection (d)(3).

(d) ELECTION OF COVERAGE.—In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Secretary of Defense may prescribe) shall be made as follows:

(1) In the case of a member described in subsection (b)(1), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) the date on which the period of transitional health care applicable to the member under section 1145(a) of this title ends; or

(C) the date the member receives the notification required pursuant to subsection (c).

(2)(A) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(i) the date on which the dependent first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; or

(ii) the date the dependent receives the notification pursuant to subsection (c).

(B) Notwithstanding subparagraph (A), if the Secretary concerned determines that the dependent's parent has failed to provide the notice referred to in subsection (c)(3)(A) with respect to the dependent in a timely fashion, the 60-day period under this paragraph shall be based only on the date under subparagraph (A)(i).

(3) In the case of a former spouse of a member or a former member who becomes eligible for continued coverage under subsection (b)(3), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under section 1072(2) of this title; or

(B) such other date as the Secretary of Defense may prescribe.

(e) COVERAGE OF DEPENDENTS.—A person eligible under subsection (b)(1) to elect to receive coverage may elect coverage either as an individual or, if appropriate, for self and dependents. A person eligible under subsection (b)(2) or subsection (b)(3) may elect only individual coverage.

(f) CHARGES.—(1) Under arrangements satisfactory to the Secretary of Defense, a person receiving continued coverage under this section shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the employee and agency contributions which would be required in the case of a similarly situated employee enrolled in a comparable health benefits plan under section 8905a(d)(1)(A)(i) of title 5; and

(B) an amount, not to exceed 10 percent of the amount determined under subparagraph (A), determined under regulations prescribed by the Secretary of Defense to be necessary for administrative expenses; and

(2) If a person elects to continue coverage under this section before the end of the applicable period under subsection (d), but after the person's coverage under this chapter (and any transitional extension of coverage under section 1145(a) of this title) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and

effect as though no break in coverage had occurred.

(g) PERIOD OF CONTINUED COVERAGE.—(1) Continued coverage under this section may not extend beyond—

(A) in the case of a member described in subsection (b)(1), the date which is 18 months after the date the member ceases to be entitled to care under section 1074(a) of this title and any transitional care under section 1145 of this title, as the case may be;

(B) in the case of a person described in subsection (b)(2), the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; and

(C) in the case of a person described in subsection (b)(3), except as provided in paragraph (4), the date which is 36 months after the later of—

(i) the date on which the final decree of divorce, dissolution, or annulment occurs; and

(ii) if applicable, the date the one-year extension of dependency under section 1072(2)(H) of this title expires.

(2) Notwithstanding paragraph (1)(B), if a dependent of a member becomes eligible for continued coverage under subsection (b)(2) during a period of continued coverage of the member for self and dependents under this section, extended coverage of the dependent under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(3) Notwithstanding paragraph (1)(C), if a person becomes eligible for continued coverage under subsection (b)(3) as the former spouse of a member during a period of continued coverage of the member for self and dependents under this section, extended coverage of the former spouse under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(4)(A) Notwithstanding paragraph (1), in the case of a former spouse described in subparagraph (B), continued coverage under this section shall continue for such period as the former spouse may request.

(B) A former spouse referred to in subparagraph (A) is a former spouse of a member or former member (other than a former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement)—

(i) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved;

(ii) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the divorce, dissolution, or annulment; and

(iii)(I) who is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or

(II) for whom a court order (as defined in section 1408(a)(2) of this title) has been issued for payment of any portion of the retired or retainer pay or for whom a court order (as defined in section 1447(8) of this title) or a written agreement (whether voluntary or pursuant to a court order) provides for an election by the member or former member to provide an annuity to the former spouse.

(Added Pub. L. 102–484, div. D, title XLIV, § 4408(a)(1), Oct. 23, 1992, 106 Stat. 2708; amended Pub. L. 103–35, title II, § 201(g)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title VII, § 702(c), Oct. 5, 1994, 108 Stat. 2798.)

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–337, § 702(c)(1), inserted before semicolon ''or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title''.

Subsec. (c)(3). Pub. L. 103–337, § 702(c)(2), substituted ''dependent'' for ''child'' in two places and ''dependent's'' for ''child's'' wherever appearing.

Subsec. (d)(2)(A). Pub. L. 103–337, § 702(c)(3), substituted ''a dependent'' for ''a child'' in introductory provisions, ''the dependent'' for ''the child'' in cls. (i) and (ii), and ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title;'' for ''an unmarried dependent child under section 1072(2)(D) of this title,'' in cl. (i).

Subsec. (d)(2)(B). Pub. L. 103–337, § 702(c)(4), substituted ''dependent's'' for ''child's'' and ''dependent'' for ''child''.

Subsec. (g)(1)(B). Pub. L. 103–337, § 702(c)(5), substituted ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title'' for ''an unmarried dependent child under section 1072(2)(D) of this title''.

Subsec. (g)(2). Pub. L. 103–337, § 702(c)(6), substituted ''dependent'' for ''child'' in two places.

1993—Subsec. (b)(3)(C). Pub. L. 103–35, § 201(g)(1)(A), substituted ''subparagraph'' for ''subparagraphs'' after ''member under''.

Subsec. (d)(2)(A). Pub. L. 103–35, § 201(g)(1)(B), inserted ''under'' after ''coverage''.

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except that—

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service, except that pap smears and mammograms may be provided on a diagnostic or preventive basis;

(3) not more than one eye examination may be provided to a patient in any calendar year;

(4) under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis;

(6) inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of—

(A) 30 days in any year, in the case of a patient 19 years of age or older;

(B) 45 days in any year, in the case of a patient under 19 years of age; or

(C) 150 days in any year, in the case of inpatient mental health services provided as residential treatment care;

(7) services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services;

(8) services of pastoral counselors, family and child counselors, or marital counselors (other than certified marriage and family therapists) may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided;

(9) special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis;

(10) therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided;

(11) treatment of obesity may not be provided if obesity is the sole or major condition treated;

(12) surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided;

(13) any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in paragraph (4);

(14) the prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services;

(15) electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment;

(16) hospice care may be provided only in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)); and

(17) the Secretary of Defense may establish a program for the individual case management of a person covered by this section or section 1086 of this title who has extraordinary medical or psychological disorders and, under such a program, may waive benefit limitations contained in paragraphs (5) and (13) of this subsection or section 1077(b)(1) of this title and authorize the payment for comprehensive home health care services, supplies, and equipment if the Secretary determines that such a waiver is cost-effective and appropriate.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(2) Except as provided in clause (3), the first $150 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100) each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d) Under joint regulations to be prescribed by the administering Secretaries, in the case of a dependent, as described in subparagraph (A), (D), or (I) of section 1072(2) of this title, of a member of the uniformed services on active duty for a period of more than 30 days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) as follows:

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the administering Secretaries.

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the administering Secretaries.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday. In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the one-year period beginning on the date of the death of the member.

(h)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.

(2) For the purposes of paragraph (1), the 80th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.

(i)(1) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(A) provided under the program for the handicapped under subsection (d);

(B) provided as partial hospital care; or

(C) provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

(2) Notwithstanding subsection (b) or section 1086(b) of this title, the Secretary of Defense (after consulting with the other administering Secretaries) may prescribe separate payment requirements (including deductibles, copayments, and catastrophic limits) for the provision of mental health services to persons covered by this section or section 1086 of this title. The payment requirements may vary for different categories of covered beneficiaries, by type of mental health service provided, and based on the location of the covered beneficiaries.

(3) Except in the case of an emergency, the Secretary of Defense shall require preadmission authorization before inpatient mental health services may be provided to persons covered by this section or section 1086 of this title. In the case of the provision of emergency inpatient mental health services, approval for the continuation of such services shall be required within 72 hours after admission.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), the term ''provider of services'' means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2))), or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(*l*)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

(m)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(n) The Secretary of Defense may enter into contracts (or amend existing contracts) with fiscal intermediaries under which the intermediaries agree to organize and operate, directly or through subcontractors, managed health care networks for the provision of health care under this chapter. The managed health care networks shall include cost containment methods, such as utilization review and contracting for care on a discounted basis.

(*o*)(1) Health care services provided pursuant to this section or section 1086 of this title (or pursuant to any other contract or project under the Civilian Health and Medical Program of the Uniformed Services) may not include services determined under the CHAMPUS Peer Review Organization program to be not medically or psychologically necessary.

(2) The Secretary of Defense, after consulting with the other administering Secretaries, may adopt or adapt for use under the CHAMPUS Peer Review Organization program, as the Secretary considers appropriate, any of the quality and utilization review requirements and procedures that are used by the Peer Review Organization program under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.).

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, § 2(6), Sept. 30, 1966, 80 Stat. 863; Pub. L. 92–58, § 1, July 29, 1971, 85 Stat. 157; Pub. L. 95–485, title VIII, § 806(a)(1), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–342, title VIII, § 810(a), (b), Sept. 8, 1980, 94 Stat. 1097; Pub. L. 96–513, title V, §§ 501(13), 511(36), (38), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 96–552, Dec. 19, 1980, 94 Stat. 3254; Pub. L. 97–22, § 11(a)(2), July 10, 1981, 95 Stat. 137; Pub. L. 97–86, title IX, § 906(a)(1), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 98–94, title IX, § 931(a), title XII, § 1268(4), Sept. 24, 1983, 97 Stat. 648, 705; Pub. L. 98–525, title VI, § 632(a)(1), title XIV, §§ 1401(e)(4), 1405(23), Oct. 19, 1984, 98 Stat. 2543, 2617, 2623; Pub. L. 98–557, § 19(7), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VI, § 652(d), title VII, § 703, Nov. 14, 1986, 100 Stat. 3889, 3900; Pub. L. 100–180, div. A, title VII, §§ 721(a), 726(a), Dec. 4, 1987, 101 Stat. 1115, 1117; Pub. L. 100–456, div. A, title VI, § 646(a), Sept. 29, 1988, 102 Stat. 1989;

Pub. L. 101–189, div. A, title VII, § 730(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 101–510, div. A, title VII, §§ 701(a), 702(a), 703(a), (b), 712(a), title XIV, § 1484(g)(1), Nov. 5, 1990, 104 Stat. 1580, 1581, 1583, 1717; Pub. L. 102–25, title III, § 316(b), Apr. 6, 1991, 105 Stat. 87; Pub. L. 102–190, div. A, title VII, §§ 702(b), 711, 712(a), 713, Dec. 5, 1991, 105 Stat. 1400, 1402, 1403; Pub. L. 102–484, div. A, title VII, § 704, title X, §§ 1052(13), 1053(3), Oct. 23, 1992, 106 Stat. 2432, 2499, 2501; Pub. L. 103–35, title II, § 202(a)(5), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VII, §§ 711, 716(c), Nov. 30, 1993, 107 Stat. 1688, 1693; Pub. L. 103–337, div. A, title VII, §§ 702(a), 707(a), Oct. 5, 1994, 108 Stat. 2797, 2800.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1079(a)	37:402(a)(2) (as applicable to 37:411(a)).	June 7, 1956, ch. 374, §§ 102(a)(2) (as applicable to § 201(a)), 201(a), (b), 204, 70 Stat. 250, 252, 253.
	37:411(a).	
1079(b).	37:411(b).	
	37:414.	

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'', in 37:402(a)(2) are omitted as surplusage, since it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'', in 37:402(a)(2), to reflect section 101(22) and (23) of this title. The words '', under the authority of this section,'' are substituted for the words ''pursuant to the provisions of this title'' to make clear that the section provides independent procurement authority. The words ''all'', ''by the hospital'', and ''a period of'', in 37:411(a), are omitted as surplusage.

In subsection (a)(1), the word ''rooms'', in 37:411(a), is substituted for the word ''accommodations''.

In subsection (a)(5), the word ''services'' is substituted for the word ''procedures'' and the word ''performed'' is substituted for the word ''accomplished'', in 37: 411(a). The words ''or surgeon'' are inserted for clarity.

In subsection (b), the word ''variances'' is substituted for the words ''limitations, additions, exclusions''. The words ''or care other than that provided for in sections 1076–1078 of this title'' are substituted for 37:414. The words ''definitions, and related provisions'', in 37:411(b), are omitted as surplusage, since the Secretary of an executive department has inherent authority to interpret laws and issue regulations.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (j)(1), (2)(A) and (*o*)(2), is act Aug. 13, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XI of the Act is classified generally to part B (§ 1320c et seq.) of subchapter XI of chapter 7 of Title 42, The Public Health and Welfare. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(7) to (14) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (14) which first appeared in Pub. L. 96–154:

Pub. L. 98–473, title I, § 101(h) [title VIII, §§ 8031, 8032, 8045], Oct. 12, 1984, 98 Stat. 1904, 1929, 1931.

Pub. L. 98–212, title VII, §§ 737, 738, 752, Dec. 8, 1983, 97 Stat. 1445, 1447.

Pub. L. 97–377, title I, § 101(c) [title VII, §§ 740, 741, 756], Dec. 21, 1982, 96 Stat. 1833, 1857, 1860.

Pub. L. 97–114, title VII, §§ 741, 742, 759, Dec. 29, 1981, 95 Stat. 1585, 1588.

Pub. L. 96–527, title VII, §§ 742, 743, 763, Dec. 15, 1980, 94 Stat. 3088, 3092.

Pub. L. 96–154, title VII, §§ 744, 745, 769, Dec. 21, 1979, 93 Stat. 1159, 1163.

Pub. L. 95–457, title VIII, §§ 844, 845, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, §§ 843, 844, Sept. 21, 1977, 91 Stat. 907.

Pub. L. 94–419, title VII, §§ 742, 743, Sept. 22, 1976, 90 Stat. 1298.

Pub. L. 94–212, title VII, §§ 750, 751, Feb. 9, 1976, 90 Stat. 176.

Provisions similar to those added to subsec. (h)(2) of this section by section 1401(e)(4)(B) of Pub. L. 98–525 were contained in the following prior appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8077], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98–212, title VII, § 785, Dec. 8, 1983, 97 Stat. 1453.

A prior section 1079, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, which related to establishment of right to vote, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 702(a)(1), substituted ''dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title,'' for ''spouses and children''.

Subsec. (d). Pub. L. 103–337, § 702(a)(2), substituted ''as described in subparagraph (A), (D), or (I) of section 1072(2)'' for ''as defined in section 1072(2)(A) or (D)''.

Subsec. (g). Pub. L. 103–337, § 707(a), inserted at end ''In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the one-year period beginning on the date of the death of the member.''

1993—Subsec. (a)(7). Pub. L. 103–160, § 716(c), substituted ''except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services;'' for ''except that—

''(A) those services may be provided in any case in which another insurance plan or program provides primary coverage for those services; and

''(B) the Secretary of Defense may waive the 40-mile radius restriction with regard to the provision of a particular service before October 1, 1993, if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service;''.

Subsec. (a)(15). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 704(1). See 1992 Amendment note below.

Subsec. (*o*). Pub. L. 103–160, § 711, added subsec. (*o*).

1992—Subsec. (a)(15). Pub. L. 102–484, § 1053(3), made technical amendment to directory language of Pub. L. 102–190, § 702(b)(1)(C). See 1991 Amendment note below.

Pub. L. 102–484, § 704(1), as amended by Pub. L. 103–35, struck out ''and'' at end of par. (15).

Subsec. (a)(16). Pub. L. 102–484, § 704(2), substituted ''; and'' for period at end.

Subsec. (a)(17). Pub. L. 102–484, § 704(3), added par. (17).

Subsec. (j)(2)(B). Pub. L. 102–484, § 1052(13), inserted a close parenthesis after ''1395x(dd)(2)''.

1991—Subsec. (a)(6). Pub. L. 102–25, § 316(b), revived par. (6) as in effect on Feb. 14, 1991, thus negating amendment to par. (6) by Pub. L. 101–510, § 703(a), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (a)(7). Pub. L. 102–190, § 711, substituted ''except that—'' and subpars. (A) and (B), for ''except that

such services may be provided in any case in which another insurance plan or program provides primary coverage for the services;''.

Subsec. (a)(13). Pub. L. 102–190, § 702(b)(1)(A), substituted ''paragraph (4)'' for ''clause (4)''.

Subsec. (a)(14). Pub. L. 102–190, § 702(b)(1)(B), struck out ''and'' at end.

Subsec. (a)(15). Pub. L. 102–190, § 702(b)(1)(C), as amended by Pub. L. 102–484, § 1053(3), substituted ''; and'' for period at end.

Subsec. (a)(16). Pub. L. 102–190, § 702(b)(1)(D), added par. (16).

Subsec. (i). Pub. L. 102–25, § 316(b), revived subsec. (i) as in effect on Feb. 14, 1991, thus negating amendment to subsec. (i) by Pub. L. 101–510, § 703(b), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (j)(1). Pub. L. 102–190, § 713, inserted '', or covered by,'' after ''person enrolled in''.

Subsec. (j)(2)(B). Pub. L. 102–190, § 702(b)(2), inserted ''hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)),''.

Subsec. (n). Pub. L. 102–190, § 712(a), added subsec. (n).

1990—Subsec. (a)(2). Pub. L. 101–510, § 701(a), inserted before the semicolon '', except that pap smears and mammograms may be provided on a diagnostic or preventive basis''.

Subsec. (a)(6). Pub. L. 101–510, § 703(a), substituted ''in excess of—'' for ''in excess of 60 days in any year;'' and added subpars. (A) to (C).

Subsec. (a)(8). Pub. L. 101–510, § 702(a)(1), inserted ''(other than certified marriage and family therapists)'' after ''marital counselors'' and inserted before semicolon ''and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided''.

Subsec. (a)(13). Pub. L. 101–510, § 702(a)(2), inserted ''certified marriage and family therapist,'' after ''psychologist,''.

Subsec. (b)(2). Pub. L. 101–510, § 712(a)(1), substituted ''$150'' for ''$50'' and inserted at end ''Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.''

Subsec. (b)(3). Pub. L. 101–510, § 712(a)(2), substituted ''$300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100)'' for ''$100''.

Subsec. (i). Pub. L. 101–510, § 703(b), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

''(1) provided under the program for the handicapped under subsection (d);

''(2) provided as residential treatment care;

''(3) provided as partial hospital care; or

''(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.''

Subsec. (j)(2)(B). Pub. L. 101–510, § 1484(g)(1), inserted ''the term'' after ''In subparagraph (A),''.

1989—Subsec. (h)(1), (2). Pub. L. 101–189 substituted ''80th percentile'' for ''90th percentile''.

1988—Subsec. (b)(1). Pub. L. 100–456, § 646(a)(1), inserted provisions authorizing Secretary of Defense to exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (m). Pub. L. 100–456, § 646(a)(2), added subsec. (m).

1987—Subsec. (a)(15). Pub. L. 100–180, § 726(a), added par. (15).

Subsec. (b)(5). Pub. L. 100–180, § 721(a), added par. (5).

1986—Subsec. (a)(7). Pub. L. 99–661, § 703, substituted ''provides primary coverage for the services'' for ''pays for at least 75 percent of the services''.

Subsec. (*l*). Pub. L. 99–661, § 652(d), added subsec. (*l*).

1984—Subsec. (a). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services in provisions preceding cl. (1).

Subsec. (a)(3). Pub. L. 98–525, § 632(a)(1), substituted ''not more than one eye examination may be provided to a patient in any calendar year'' for ''eye examinations may not be provided''.

Subsec. (a)(4). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (a)(7) to (14). Pub. L. 98–525, § 1401(e)(4)(A), added cls. (7) to (14).

Subsecs. (b)(4), (c), (d). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (e). Pub. L. 98–525, § 1405(23), substituted ''under subsection (d) as follows:'' for ''under subsection (d).'' in provisions preceding cl. (1).

Subsecs. (e)(1), (f). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (h)(2). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525, § 1401(e)(4)(B), substituted ''The Secretary of Defense shall adjust the base period as frequently as he considers appropriate'' for ''The base period shall be adjusted at least once a year''.

Subsec. (j)(2)(A). Pub. L. 98–557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (k)(1), (2). Pub. L. 98–557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1983—Subsec. (a). Pub. L. 98–94, § 1268(4)(A), substituted ''30'' for ''thirty'' in provisions preceding par. (1).

Subsec. (a)(6). Pub. L. 98–94, § 931(a)(1), added par. (6).

Subsec. (d). Pub. L. 98–94, § 1268(4)(A), substituted ''30'' for ''thirty''.

Subsec. (g). Pub. L. 98–94, § 1268(4)(B), struck out ''of this section'' after ''subsection (d)''.

Subsecs. (i) to (k). Pub. L. 98–94, § 931(a)(2), added subsecs. (i) to (k).

1981—Subsec. (b)(4). Pub. L. 97–22 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (h). Pub. L. 97–86 substituted reference to services of individual health-care professionals for former reference to physician services, struck out provisions that had used the concept of a predetermined charge level based upon customary charges, and inserted provisions requiring a readjustment of the base period at least once a year.

1980—Subsec. (a). Pub. L. 96–513, § 511(36), (38)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing, and ''that—'' for ''that:''.

Subsec. (a)(2). Pub. L. 96–342, § 810(a)(1), inserted ''of dependents over two years of age'' after ''immunizations''.

Subsec. (a)(3). Pub. L. 96–342, § 810(a)(2), struck out ''routine care of the newborn, well-baby care, and'' after ''(3)''.

Subsec. (b)(4). Pub. L. 96–552 added par. (4).

Pub. L. 96–513, § 511(38)(B), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 96–513, §§ 501(13), 511(36), substituted ''section 1072(2)(A) or (D) of this title'' for ''section 1072(2)(A), (C), or (E) of this title'', and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (e). Pub. L. 96–513, § 511(36), (38)(C), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''(d) as follows:'' for ''(d).''.

Subsec. (e)(2). Pub. L. 96–342, § 810(b), substituted ''$1,000'' for ''$350''.

Subsec. (f). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (g). Pub. L. 96–513, § 511(38)(D), struck out '', United States Code,'' after ''37''.

Subsec. (h). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (h). Pub. L. 95–485 added subsec. (h).

1971—Subsec. (g). Pub. L. 92–58 added subsec. (g).

1966—Subsec. (a). Pub. L. 89–614 struck out ''dependent'' before ''spouses and children'' and substituted sentence providing that ''The types of health care authorized under this section, shall be the same as those provided under section 1076 of this title'', enumerating exceptions in pars. (1) to (5) for former provisions which required the insurance, medical service, or health plans to include (1) hospitalization in semiprivate rooms for not more than 365 days for each admission, (2) medical and surgical care incident to hospitalization, (3) obstetrical and maternity service, including prenatal and postnatal care, (4) services of physician or surgeon before or after hospitalization for bodily injury or surgical operation, (5) diagnostic tests and services incident to hospitalization, and (6) payments by patient of hospital expenses, now incorporated in subsec. (b)(1).

Subsec. (b). Pub. L. 89–614 incorporated existing provisions of subsec. (a)(6) in par. (1) and added pars. (2) and (3). Former subsec. (b) authorized the Secretary of Defense to make variances from subsec. (a) requirements as appropriate other than outpatient care or care other than provided for in sections 1076 to 1078 of this title.

Subsecs. (c) to (f). Pub. L. 89–614 added subsecs. (c) to (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 707(a) of Pub. L. 103–337 applicable with respect to dependents described in amendments by section 707(a) and (b) of Pub. L. 103–337 of a member of a uniformed service who dies on or after Oct. 1, 1993, while on active duty for a period of more than 30 days, see section 707(c) of Pub. L. 103–337, set out as a note under section 1076a of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(3) of Pub. L. 102–484 provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 316(b) of Pub. L. 102–25 provided that the amendment made by that section is effective Feb. 15, 1991.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–510 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the provision of pap smears and mammograms under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 702(b) of Pub. L. 101–510 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the services of certified marriage and family therapists provided under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 703(d) of Pub. L. 101–510, as amended by Pub. L. 102–25, title III, § 316(a)(1), Apr. 6, 1991, 105 Stat. 87, provided that: ''This section and the amendments made by this section [amending this section] shall take effect on October 1, 1991, and shall apply with respect to mental health services provided under section 1079 or 1086 of title 10, United States Code, on or after that date.''

Section 712(c) of Pub. L. 101–510 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply with respect to health care provided under sections 1079 and 1086 of title 10, United States Code, on or after April 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 730(b) of Pub. L. 101–189 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services provided on or after October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 646(c) of Pub. L. 100–456 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1086 of this title] shall apply with respect to medical care received after September 30, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 721(c) of Pub. L. 100–180 provided that: ''Paragraph (5) of section 1079(b) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1086(b) of such title, as added by subsection (b), shall apply with respect to fiscal years beginning after September 30, 1987.''

Section 726(b) of Pub. L. 100–180 provided that: ''Paragraph (15) of section 1079(a) of such title, as added by subsection (a), shall apply with respect to costs incurred for home monitoring equipment after the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 652(e)(4) of Pub. L. 99–661 provided that: ''The amendment made by subsection (d) [amending this section] shall apply only with respect to care furnished under section 1079 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 632(a)(3) of Pub. L. 98–525 provided that: ''The amendments made by this subsection [amending this section and section 1086 of this title] shall apply only to health care furnished after September 30, 1984.''

Amendment by section 1401(e)(4) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 931(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall take effect on October 1, 1983, except that—

''(1) clause (6) of section 1079(a) of title 10, United States Code, as added by subsection (a)(1), shall not apply in the case of inpatient mental health services provided to a patient admitted before January 1, 1983, for so long as that patient remains continuously in inpatient status for medically or psychologically necessary reasons; and

''(2) subsection (k) of section 1079 of such title, as added by subsection (a)(1), shall apply with respect to

liver transplant operations performed on or after July 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 906(b) of Pub. L. 97–86 provided that: ''The amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 501(13) of Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511 of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Section 810(c) of Pub. L. 96–342 provided that: ''The amendments made by this section [amending this section] shall apply to medical care provided after September 30, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 806(b) of Pub. L. 95–485 provided that: ''the amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after the date of enactment of this Act [Oct. 20, 1978].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–58 provided that: ''This Act [amending this section] becomes effective as of January 1, 1967. However, no person is entitled to any benefits because of this Act for any period before the date of enactment [July 29, 1971].''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

PROGRAMS RELATING TO SALE OF PHARMACEUTICALS

Section 702 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title VII, § 721, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 706, Oct. 5, 1994, 108 Stat. 2800, provided that:

''(a) DEMONSTRATION PROJECT FOR PHARMACEUTICALS BY MAIL.—Not later than 18 months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the administering Secretaries, shall—

''(1) establish a demonstration project that permits eligible persons described in subsection (c) to obtain prescription pharmaceuticals by mail in connection with medical care furnished to such persons under chapter 55 of title 10, United States Code; and

''(2) conduct the demonstration project in two or more regions selected by the Secretary, each of which consists of two or more States.

''(b) RETAIL PHARMACY NETWORK.—To the maximum extent practicable, the Secretary of Defense shall include in each managed health care program initiated, awarded, or renewed by the Secretary after January 1, 1993, a program to supply prescription pharmaceuticals to eligible persons described in subsection (c) through a managed care network of community retail pharmacies in the area covered by the managed health care program.

''(c) ELIGIBLE PERSONS.—A person eligible to obtain pharmaceuticals under the demonstration project established under subsection (a) or the retail pharmacy network included in a managed health care program under subsection (b) is any person living in the area covered by the demonstration project or managed health care program—

''(1) who is eligible for medical care under a contract for medical care entered into by the Secretary of Defense under section 1079 or 1086 of title 10, United States Code; or

''(2) who—

''(A) would be eligible for medical care under a contract for medical care entered into under section 1086 of such title except for operation of subsection (d)(1) of such section; and

''(B) either—

''(i) resides in an area that is adversely affected (as determined by the Secretary) by the closure of a health care facility of the uniformed services as a result of the closure or realignment of the military installation at which such facility is located; or

''(ii) can demonstrate to the satisfaction of the Secretary that the person relied upon a health care facility referred to in clause (i) before the closure of the facility to obtain the person's pharmaceuticals.

''(d) PHARMACEUTICALS OFFERED; PURCHASE FEES.—(1) The Secretary of Defense, in consultation with the administering Secretaries, shall—

''(A) determine the pharmaceuticals that may be obtained by eligible persons under the demonstration project established under subsection (a) or the retail pharmacy network included in a managed health care program under subsection (b); and

''(B) establish an appropriate fee, charge, or copayment to be paid by such persons for pharmaceuticals obtained under the demonstration project or managed health care program.

''(2) In the case of persons eligible to participate in the demonstration project for pharmaceuticals or the retail pharmacy network by reason of clause (ii) of subsection (c)(2)(B), the Secretary of Defense may increase the fees, charges, and copayments established under paragraph (1)(B) and otherwise applicable to such persons by an amount necessary to cover any additional costs incurred by the administering Secretaries as a result of making pharmaceuticals available to such persons under this section.

''(e) REPORT REGARDING DEMONSTRATION PROJECT.—Not later than two years after the establishment of the demonstration project under subsection (a), the Secretary of Defense shall submit to Congress a report—

''(1) describing the results of the demonstration project required by subsection (a);

''(2) containing such recommendations for revision of the demonstration project as the Secretary considers to be necessary; and

''(3) containing a plan (including a schedule) for implementing the demonstration project throughout the United States.

''(f) ADDITIONAL REPORT REGARDING PROGRAMS.—Not later than January 1, 1994, the Secretary of Defense shall submit to Congress a report containing—

''(1) an evaluation of the feasibility and advisability of increasing the size of those areas determined by the Secretary under subsection (c)(2) to be adversely affected by the closure of a health care facility of the uniformed services in order to increase the number of persons described in such subsection who will be eligible to participate in the demonstration project for pharmaceuticals by mail or in the retail pharmacy network under this section;

''(2) an evaluation of the feasibility and advisability of expanding the demonstration project and the retail pharmacy network under this section to include all covered beneficiaries under chapter 55 of title 10, United States Code, including those persons currently excluded from participation in the Civilian Health and Medical Program of the Uniformed Services by operation of section 1086(d)(1) of such title;

''(3) an estimation of the costs that would be incurred, and any savings that would be achieved by improving efficiencies of operation, as a result of undertaking the increase or expansion described in paragraph (1) or (2); and

''(4) such recommendations as the Secretary considers to be appropriate.

''(g) DEFINITIONS.—In this section, the terms 'uniformed services' and 'administering Secretaries' have the meanings given those terms in section 1072 of title 10, United States Code.''

CORRECTION OF OMISSION IN DELAY OF INCREASE OF CHAMPUS DEDUCTIBLES RELATED TO OPERATION DESERT STORM

Section 721 of Pub. L. 102–484 provided that:

''(a) LOWER CHAMPUS ANNUAL DEDUCTIBLE.—In the case of health care provided under section 1079 or 1086 of title 10, United States Code, during the period beginning on April 1, 1991, and ending on September 30, 1991, to a CHAMPUS beneficiary described in subsection (b), the annual deductibles specified in such sections applicable to that care may not exceed the annual deductibles in effect under such sections on November 4, 1990.

''(b) ELIGIBLE CHAMPUS BENEFICIARIES.—A CHAMPUS beneficiary referred to in subsection (a) is a covered beneficiary of the Civilian Health and Medical Program of the Uniformed Services who, during any portion of the period specified in that subsection—

''(1) was a member or former member of a uniformed service entitled to retired or retainer pay and served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm; or

''(2) was a dependent of a member of a uniformed service who served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm.

''(c) CREDIT OR REIMBURSEMENT OF EXCESS.—Subject to the availability of appropriated funds to the Secretary of Defense, the Secretary shall provide—

''(1) for the reimbursement of the amount of any deductible paid under section 1079 or 1086 of title 10, United States Code, during the period specified in subsection (a) in excess of the amount required to be paid by operation of that subsection; or

''(2) for a credit against the annual deductible required under such sections for a fiscal year equal to the amount of the excess deductible paid.

''(d) DEFINITIONS.—For purposes of this section, the term 'Operation Desert Storm' has the meaning given that term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 10 U.S.C. 101 note).''

TEMPORARY CHAMPUS PROVISIONS FOR DEPENDENTS OF OPERATION DESERT SHIELD/DESERT STORM ACTIVE DUTY PERSONNEL

Pub. L. 102–172, title VIII, §8085, Nov. 26, 1991, 105 Stat. 1192, provided that: ''Any CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) health care provider may voluntarily waive the patient copayment for medical services provided from August 2, 1990, until the termination of Operation Desert Shield/Desert Storm for dependents of active duty personnel: *Provided*, That the Government's share of medical services is not increased during the specified time period.''

Similar provisions were contained in Pub. L. 102–28, §105, Apr. 10, 1991, 105 Stat. 165.

Section 312 of Pub. L. 102–25 provided that:

''(a) DELAY IN THE INCREASE OF ANNUAL DEDUCTIBLES UNDER CHAMPUS.—The annual deductibles specified in subsection (b) of section 1079 of title 10, United States Code (as in effect on November 4, 1990), shall apply until October 1, 1991, in the case of health care provided under that section to the dependents of a member of the uniformed services who serves or served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm.

''(b) WAIVER OF COPAYMENT REQUIREMENTS.—(1) Any civilian health care provider furnishing health care pursuant to a plan contracted for under the authority of section 1079 or 1086 of title 10, United States Code, may waive, in whole or in part, any requirement for payment under subsection (b) of that section by a patient described in paragraph (2) for health care furnished the patient by such health care provider during the Persian Gulf conflict.

''(2) A patient referred to in paragraph (1) is a dependent of a member of the uniformed services who serves on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm.

''(3) If a health care provider waives a payment for health care under paragraph (1), the health care provider shall certify to the Secretary of Defense that the amount charged the Federal Government for such health care was not increased above the amount that the health care provider would have charged the Federal Government for such health care had the payment not been waived. The Secretary of Defense may require a health care provider to provide information to the Secretary to show the compliance of the health care provider with this paragraph.''

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

For provision authorizing transitional health care, including health benefits contracted for under subsec. (a) of this section, for members, or dependents of members, upon release of member from active duty in connection with Operation Desert Storm, see section 313 of Pub. L. 102–25, set out as a note under section 1076 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1074b, 1080, 1081, 1082, 1083, 1086, 1086a, 1096, 1098, 1100, 1104, 1105, 1145 of this title; title 42 sections 248d, 300e–1, 1395cc.

§1080. Contracts for medical care for spouses and children: election of facilities

(a) ELECTION.—A dependent covered by section 1079 of this title may elect to receive medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the other administering Secretaries, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

(b) ISSUANCE OF NONAVAILABILITY OF HEALTH CARE STATEMENTS.—In determining whether to issue a nonavailability of health care statement for a dependent described in subsection (a), the commanding officer of a facility of the uniformed services may consider the availability of health care services for the dependent pursuant to any contract or agreement entered into under this chapter for the provision of health care services.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(8), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 103–160, div. A, title VII, §716(b)(1), Nov. 30, 1993, 107 Stat. 1692.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1080	37:411(c).	June 7, 1956, ch. 374, §201(c), 70 Stat. 252.

The words ''a plan contracted for under section 1079 of this title'' are substituted for the words ''such insurance, medical service, or health plan or plans as may be provided by the authority contained in this section''. The words ''under the terms of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1080, act Aug. 10, 1956, ch. 1041, 70A Stat. 85, which related to style and marking of envelopes, inserts, return envelopes, and to weight of ballots, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1993—Pub. L. 103–160 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1984—Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1086 of this title.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the appropriate administering Secretary, not later than 120 days after the close of each year the plan is in effect.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–375, title I, § 104(a), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–94, title XII, § 1268(5)(A), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, § 19(9), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1081	37:412.	June 7, 1956, ch. 374, § 202, 70 Stat. 253.

The words ''Each plan under section 1079 of this title'' are substituted for the words ''Any insurance, medical service, or health plan or plans which may be entered into by the Secretary of Defense with respect to medical care under the provisions of this chapter''. The words ''after the close of each year the plan is in effect'' are substituted for the words ''after the first year the plan or plans have been in effect and each year thereafter''. The words ''Not later than'' are substituted for the word ''within''.

PRIOR PROVISIONS

A prior section 1081, act Aug. 10, 1956, ch. 1041, 70A Stat. 86, which related to notification of elections, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to appropriate administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services.

1983—Pub. L. 98–94 struck out ''; reports'' after ''adjustment of payments'' in section catchline.

1982—Pub. L. 97–375 struck out requirement that the Secretary of Defense report to the Committees on Armed Services of the Congress amounts paid and adjustments made during the year covered by the review not later than 90 days after such review.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1082. Contracts for health care: advisory committees

To carry out sections 1079–1081 and 1086 of this title, the Secretary of Defense may establish advisory committees on insurance, medical service, and health plans, to advise and make recommendations to him. He shall prescribe regulations defining their scope, activities, and procedures. Each committee shall consist of the Secretary, or his designee, as chairman, and such other persons as the Secretary may select. So far as possible, the members shall be representative of the organizations in the field of insurance, medical service, and health plans. They shall serve without compensation but may be allowed transportation and a per diem payment in place of subsistence and other expenses.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 89–614, § 2(8), Sept. 30, 1966, 80 Stat. 866.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1082	37:413.	June 7, 1956, ch. 374, § 203, 70 Stat. 253.

The word ''organizations'' is inserted for clarity. The words ''consult'' and ''or plans'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1082, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to extension of time limit for making ballots available, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1966—Pub. L. 89–614 substituted ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in section catchline and included reference to section 1086 in text.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the other administering Secretaries.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(10), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1083	37:423.	June 7, 1956, ch. 374, §303, 70 Stat. 254.

The words ''dependent covered by a plan under section 1079 of this title'' are substituted for the words ''person who is covered under an insurance, medical service, or health plan or plans, as provided in this chapter''. The words ''period of'', ''or plans'', and ''required by such person in a civilian facility'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1083, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to transmission, delivery, and return of post cards, ballots, etc., was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§1084. Determinations of dependency

A determination of dependency by an administering Secretary under this chapter is conclusive. However, the administering Secretary may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, §511(34)(A), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, §19(11), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1084	37:404.	June 7, 1956, ch. 374, §304, 70 Stat. 254.

The words ''the General Accounting Office'' are substituted for the words ''any accounting officer of the Government'' for clarity. The words ''All'' and ''for all purposes'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1084, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to administration of former sections 1071 to 1086 of this title, was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services and reference to administering Secretary for reference to he.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''this chapter'' for ''sections 1071–1087 of this title''.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§1085. Medical and dental care from another executive department: reimbursement

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–264, §1, Oct. 19, 1965, 79 Stat. 989; Pub. L. 96–513, title V, §511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–94, title XII, §1268(6), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, §19(12), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title XIII, §1303(a)(8), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1085	37:421(d).	June 7, 1956, ch. 374, § 301(d), 70 Stat. 253.

The words ''other than that of the member or former member concerned'' are substituted for the words ''that is not the service of which he is a member or retired member, or that is not the service of the member or retired member upon whom he is dependent''. The word ''medical'' before the word ''facility'' is omitted to make clear that the provision also relates to dental care. The words ''pursuant to the provisions of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1085, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, which related to prevention of fraud, coercion, and undue influence, to free discussion, and to acts done in good faith, was repealed by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1985—Pub. L. 99–145 indented first line of text.

1984—Pub. L. 98–557 substituted ''If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care'' for ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health and Human Services, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the President to reflect the average cost of providing such care''.

1983—Pub. L. 98–94 inserted a comma after ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent''.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''President'' for ''Bureau of the Budget''.

1965—Pub. L. 89–264 substituted ''executive department'' for ''uniformed service'' in section catchline, and provisions requiring reimbursement if a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives care in a facility under the jurisdiction of Secretary of Health, Education, and Welfare, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives care in a facility of an armed force under the jurisdiction of a military department, for provisions which required reimbursement if a person received care in a facility of a uniformed service other than that of the member or former member concerned.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to establish uniform rates of reimbursement for inpatient medical or dental care delegated to Secretary of Health and Human Services in respect of such care in a facility under his jurisdiction and to Secretary of Defense in respect of such care in a facility of an armed force under jurisdiction of a military department, see section 6 of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $7,500 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply in the case of a person referred to in subsection (c) who—

(A) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a));

(B) is under 65 years of age; and

(C) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of—

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term ''medicare'' means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term ''third party payer'' has the meaning given such term in section 1095(h)(1) of this title.

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. In addition, section 1080(b) of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Section 1079(j) of this title shall apply to a plan contracted for under this section, except that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(Added Pub. L. 89–614, §2(7), Sept. 30, 1966, 80 Stat. 865; amended Pub. L. 95–485, title VIII, §806(a)(2), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–173, §1, Dec. 29, 1979, 93 Stat. 1287; Pub. L. 96–513, title V, §§501(14), 511(36), (39), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 97–86, title IX, §906(a)(2), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–252, title X, §1004(c), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–94, title IX, §931(b), Sept. 24, 1983, 97 Stat. 649; Pub. L. 98–525, title VI, §632(a)(2), Oct. 19, 1984, 98 Stat. 2543; Pub. L. 98–557, §19(13), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title VI, §652(b), Nov. 8, 1985, 99 Stat. 657; Pub. L. 99–661, div. A, title VI, §604(f)(1)(C), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 100–180, div. A, title VII, §721(b), Dec. 4, 1987, 101 Stat. 1115; Pub. L. 100–456, div. A, title VI, §646(b), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, §731(c)(2), title XVI, §1621(a)(3), Nov. 29, 1989, 103 Stat. 1482, 1603; Pub. L. 101–510, div. A, title VII, §712(b), Nov. 5, 1990, 104 Stat. 1583; Pub. L. 102–190, div. A, title VII, §704(a), (b)(1), Dec. 5, 1991, 105 Stat. 1401; Pub. L. 102–484, div. A, title VII, §§703(a), 705(a), Oct. 23, 1992, 106 Stat. 2432; Pub. L. 103–35, title II, §203(b)(2), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title VII, §716(b)(2), Nov. 30, 1993, 107 Stat. 1693; Pub. L. 103–337, div. A, title VII, §711, Oct. 5, 1994, 108 Stat. 2801.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of title 42 and Tables.

PRIOR PROVISIONS

A prior section 1086, act Aug. 10, 1956, ch. 1041, 70A Stat. 88, which authorized the mailing of official post cards, ballots, voting instructions, and envelopes, free of postage, was repealed by Pub. L. 85–861, § 36(B)(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–337 added par. (3) and struck out former par. (3) which read as follows: ''If a person described in paragraph (2) receives medical or dental care for which payment may be made under both title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and a plan contracted for under subsection (a), the amount payable for that care under the plan may not exceed the difference between—

''(A) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under that title; and

''(B) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under the plan.''

1993—Subsec. (d). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–190, § 704(a). See 1991 Amendment note below.

Subsec. (e). Pub. L. 103–160 inserted at end ''In addition, section 1080(b) of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.''

1992—Subsec. (b)(4). Pub. L. 102–484, § 703(a), substituted ''$7,500'' for ''$10,000''.

Subsec. (d)(2)(A). Pub. L. 102–484, § 705(a), inserted before semicolon ''or section 226A(a) of such Act (42 U.S.C. 426–1(a))''.

1991—Subsec. (c). Pub. L. 102–190, § 704(b)(1)(A), substituted ''Except as provided in subsection (d), the following'' for ''The following'' in introductory provisions and struck out at end ''However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.''

Subsec. (d). Pub. L. 102–190, § 704(a), as amended by Pub. L. 103–35, added subsec. (d) and struck out former subsec. (d) which read as follows: ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section.''

Subsec. (g). Pub. L. 102–190, § 704(b)(1)(B), substituted ''Section 1079(j) of this title shall apply to a plan contracted for under this section, except that'' for ''Notwithstanding subsection (d) or any other provision of this chapter,''.

1990—Subsec. (b)(1), (2). Pub. L. 101–510 substituted ''$150'' for ''$50'' in par. (1) and ''$300'' for ''$100'' in par. (2).

1989—Subsec. (c)(3). Pub. L. 101–189, § 731(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A dependent covered by section 1072(2)(F) of this title.''

Subsec. (g). Pub. L. 101–189, § 1621(a)(3), substituted ''facilities of the Department of Veterans Affairs'' for ''Veterans' Administration facilities''.

1988—Subsec. (b)(3). Pub. L. 100–456, § 646(b)(1), inserted provision authorizing Secretary of Defense to exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (h). Pub. L. 100–456, § 646(b)(2), added subsec. (h).

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1986—Subsec. (c)(2)(B). Pub. L. 99–661 inserted reference to disease.

1985—Subsec. (c)(2). Pub. L. 99–145 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)(E) of this title.''

1984—Subsec. (a). Pub. L. 98–557, § 19(13)(A), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525 inserted ''However, eye examinations may not be provided under such plans for persons covered by subsection (c).''

Subsec. (e). Pub. L. 98–557, § 19(13)(B), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

1983—Subsec. (d). Pub. L. 98–94 substituted ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section'' for ''No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan''.

1982—Subsec. (c)(3). Pub. L. 97–252 added par. (3).

1981—Subsec. (f). Pub. L. 97–86 substituted ''services by an individual health-care professional (or other noninstitutional health-care provider)'' for ''physician services''.

1980—Subsec. (a). Pub. L. 96–513, § 511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, § 511(39)(A), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §§ 501(14), 511(39)(B), substituted ''section 1072(2)(E)'' for ''section 1072(2)(F)'' in pars. (1) and (2) and, in provisions following par. (2), substituted ''part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)'' for ''title I of the Social Security Amendments of 1965 (79 Stat. 286)''.

1979—Subsec. (g). Pub. L. 96–173 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–485 added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 703(b) of Pub. L. 102–484 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 704(c) of Pub. L. 102–190, which provided that subsection (d) of this section was to apply with respect to health care benefits or services received by a person described in such subsection on or after Dec. 5, 1991, was repealed by Pub. L. 102–484, div. A, title VII, § 705(c)(1), Oct. 23, 1992, 106 Stat. 2433.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable with respect to health care provided under this section and section 1079 of this title on or after Apr. 1, 1991, see section 712(c) of Pub. L. 101–510, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(2) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable with respect to medical care received after September 30, 1988, see section 646(c) of Pub. L. 100–456, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable with respect to fiscal years beginning after September 30, 1987, see section 721(c) of Pub. L. 100–180, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 applicable only with respect to dependents of members of the uniformed services whose deaths occur after Sept. 30, 1985, see section 652(c) of Pub. L. 99–145, set out as a note under section 1076 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 applicable only to health care furnished after Sept. 30, 1984, see section 632(a)(3) of Pub. L. 98–525, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 931(c) of Pub. L. 98–94, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 to apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on Dec. 1, 1981, see section 906(b) of Pub. L. 97–86, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(14) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(36), (39) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 2 of Pub. L. 96–173 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on October 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–485 applicable with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after Oct. 20, 1978, see section 806(b) of Pub. L. 95–485, set out as a note under section 1079 of this title.

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

MINIMUM AMOUNT PAYABLE FOR SERVICES PROVIDED UNDER THIS SECTION

Pub. L. 103–335, title VIII, §8052, Sept. 30, 1994, 108 Stat. 2629, provided that: ''Notwithstanding any other provision of law, of the funds appropriated for the Defense Health Program during this fiscal year and hereafter, the amount payable for services provided under this section shall not be less than the amount calculated under the coordination of benefits reimbursement formula utilized when CHAMPUS is a secondary payor to medical insurance programs other than Medicare, and such appropriations as necessary shall be available (notwithstanding the last sentence of section 1086(c) of title 10, United States Code) to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, under such section for a former member of a uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, or any other beneficiary described by section 1086(c) of title 10, United States Code, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) [42 U.S.C. 1395c et seq.] solely on the grounds of physical disability, or end stage renal disease: *Provided*, That expenses under this section shall only be covered to the extent that such expenses are not covered under parts A and B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395; et seq.] and are otherwise covered under CHAMPUS: *Provided further*, That no reimbursement shall be made for services provided prior to October 1, 1991.''

AUTHORIZATION TO APPLY SECTION 1079 PAYMENT RULES FOR SPOUSE AND CHILDREN OF MEMBER WHO DIES WHILE ON ACTIVE DUTY

Pub. L. 103–160, div. A, title VII, §704, Nov. 30, 1993, 107 Stat. 1687, provided that in the case of an eligible dependent of a member of a uniformed service who died while on active duty for a period of more than 30 days, the administering Secretary could apply the payment provisions set forth in section 1079(b) of this title (in lieu of the payment provisions set forth in section 1086(b) of this title), with respect to health benefits received by the dependent under such section 1086 in connection with an illness or medical condition for which the dependent was receiving treatment under chapter 55 of this title at time of death of the member, prior to repeal by Pub. L. 103–337, div. A, title VII, §707(d), Oct. 5, 1994, 108 Stat. 2801.

[Section 707(d) of Pub. L. 103–337 provided in part that: ''The repeal of such section [section 704 of Pub. L. 103–160, formerly set out above] shall not terminate the special payment rules provided in such section with respect to any person eligible for such payment rules on the date of the enactment of this Act [Oct. 5, 1994].'']

COVERAGE OF CARE PROVIDED SINCE SEPTEMBER 30, 1991

Section 705(b) of Pub. L. 102–484 provided that: ''Subsection (d) of section 1086 of title 10, United States Code, as added by section 704(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1401) and amended by subsection (a) of this section, shall apply with respect to health care benefits or services received after September 30, 1991, by a person described in subsection (d)(2) of such section 1086 if such benefits or services would have been covered under a plan contracted for under such section 1086.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1079, 1082, 1086a, 1087, 1096, 1097, 1098, 1100, 1104, 1105 of this title; title 38 section 1713; title 42 sections 248d, 300e–1, 1395cc.

§1086a. Certain former spouses: extension of period of eligibility for health benefits

(a) AVAILABILITY OF CONVERSION HEALTH POLICIES.—The Secretary of Defense shall inform each person who has been a dependent for a period of one year or more under section 1072(2)(H)

of this title of the availability of a conversion health policy for purchase by the person. A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.

(b) EFFECT OF PURCHASE.—(1) Subject to paragraph (2), if a person who is a dependent for a one-year period under section 1072(2)(H) of this title purchases a conversion health policy within that period (or within a reasonable time after that period as prescribed by the Secretary of Defense), the person shall continue to be eligible for medical and dental care in the manner described in section 1076 of this title and health benefits under section 1086 of this title until the end of the 24-month period beginning on the later of—

(A) the date the person is no longer a dependent under section 1072(2)(H) of this title; and

(B) the date of the purchase of the policy.

(2) The extended period of eligibility provided under paragraph (1) shall apply only with regard to a condition of the person that—

(A) exists on the date on which coverage under the conversion health policy begins; and

(B) for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(c) EFFECT OF UNAVAILABILITY OF POLICIES.—(1) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to offer conversion health policies under subsection (a) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall provide the coverage required under such a policy through the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (2), a person receiving coverage under this subsection shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(2) The amount paid by a person who purchases a conversion health policy from the Secretary of Defense under paragraph (1) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(3) In order to reduce premiums required under paragraph (1), the Secretary of Defense may offer a program of coverage that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(d) CONVERSION HEALTH POLICY DEFINED.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and the private insurer, that is available for purchase by or for the use of a person who is a dependent for a one-year period under section 1072(2)(H) of this title.

(Added Pub. L. 101–189, div. A, title VII, § 731(b)(1), Nov. 29, 1989, 103 Stat. 1482; amended Pub. L. 102–484, div. D, title XLIV, § 4407(b), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–35, title II, § 202(a)(16), May 31, 1993, 107 Stat. 102.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 4407(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, § 4407(b)(1), inserted at end ''A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.''

Subsec. (b)(1). Pub. L. 102–484, § 4407(b)(2), as amended by Pub. L. 103–35, substituted ''24-month period'' for ''one-year period'' the second place appearing in the introductory provisions of par. (1).

Subsecs. (c), (d). Pub. L. 102–484, § 4407(b)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if section had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1072 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

Section 4407(c) of Pub. L. 102–484 provided that: ''In the case of conversion health policies provided under section 1145(b) or 1086a(a) of title 10, United States Code, and in effect on the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall—

''(1) arrange with the private insurer providing these policies to extend the term of the policies (and coverage of preexisting conditions) as provided by the amendments made by this section [amending this section and section 1145 of this title]; or

''(2) make other arrangements to implement the amendments made by this section with respect to these policies.''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

Section 4408(c) of Pub. L. 102–484 provided that:

''(1) No person may purchase a conversion health policy under section 1145(b) or 1086a of title 10, United States Code, on or after October 1, 1994. A person covered by such a conversion health policy on that date may cancel that policy and enroll in a health benefits plan under section 1078a of such title.

''(2) No person may be covered concurrently by a conversion health policy under section 1145(b) or 1086a of such title and a health benefits plan under section 1078a of such title.''

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

(a) Space for inpatient and outpatient care may be programed in facilities of the uniformed services for persons covered by sections 1074(b) and 1076(b) of this title. The maximum amount of space that may be so programed for a facility is the greater of—

(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by sections 1074(b) and 1076(b) of this title.

(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the Secretary concerned shall take into consideration—

(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by sections 1074(b) and 1076(b) of this title; and

(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).

(Added Pub. L. 89–614, §2(7), Sept. 30, 1966, 80 Stat. 866; amended Pub. L. 97–337, §1, Oct. 15, 1982, 96 Stat. 1631; Pub. L. 98–525, title XIV, §1405(24), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, §1343(a)(4), Nov. 14, 1986, 100 Stat. 3992.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title XVIII of the Social Security Act, is classified generally to Part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–661 substituted ''Act (42 U.S.C. 1395c et seq.))'' for ''Act. (42 U.S.C. 1395c et seq.)''.

1984—Subsec. (b)(2). Pub. L. 98–525 which directed that ''(42 U.S.C. 1395c et seq.)'' be inserted after ''the Social Security Act.'', was executed by inserting parenthetical after ''the Social Security Act'' to reflect the probable intent of Congress. See 1986 Amendment note above.

1982—Subsec. (a). Pub. L. 97–337, §1(1), designated existing provisions as subsec. (a).

Pub. L. 97–337, §1(2), substituted provisions limiting the maximum amount of space to be programed as the greater of the amounts of space described in par. (1) or (2) for provisions limiting the amount of space to be programed to that amount needed to support teaching and training requirements, except that space may be programed in areas having large concentrations of retired members where there is a critical shortage of facilities.

Subsec. (b). Pub. L. 97–337, §1(2), added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 2 of Pub. L. 97–337 provided that: ''The amendment made by paragraph (2) of the first section of this Act [amending this section] shall apply only with respect to a facility for which funds for construction (or a major alteration) are first appropriated for a fiscal year after fiscal year 1983.''

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§1088. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added Pub. L. 91–481, §2(1), Oct. 21, 1970, 84 Stat. 1081.)

§1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the

action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the District Court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term ''head of the agency concerned'' means—

(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Transportation, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

(Added Pub. L. 94–464, § 1(a), Oct. 8, 1976, 90 Stat. 1985; amended Pub. L. 97–124, § 2, Dec. 29, 1981, 95 Stat. 1666; Pub. L. 98–94, title IX, § 934(a)–(c), Sept. 24, 1983, 97 Stat. 651, 652; Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title XV, § 1533(a)(1), Nov. 5, 1990, 104 Stat. 1733.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, § 1533(a)(1)(A), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home''.

Subsec. (g)(3). Pub. L. 101–510, § 1533(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''the Board of Commissioners of the United States Soldiers' and Airmen's home, in the case of an employee of the United States Soldiers' and Airmen's Home; and''.

1987—Subsec. (g). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1983—Subsec. (a). Pub. L. 98–94, § 934(a), inserted ''the United States Soldiers' and Airmen's Home,''.

Subsec. (f). Pub. L. 98–94, § 934(b), substituted ''may, to the extent that the head of the agency concerned considers'' for ''or his designee may, to the extent that he or his designee deems''.

Subsec. (g)(3), (4). Pub. L. 98–94, § 934(c)(3), added par. (3) and redesignated former par. (3) as (4).

1981—Subsec. (a). Pub. L. 97–124 inserted ''the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32,'' after ''armed forces,''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 934(d) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4 of Pub. L. 97–124 provided that: ''The amendments made by this Act [amending this section and section 2671 of Title 28, Judiciary and Judicial Procedure] and the repeal made by section 3 of this Act [repealing section 334 of Title 32, National Guard] shall apply only with respect to claims arising on or after the date of enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE

Section 4 of Pub. L. 94–464 provided that: ''This Act [enacting this section, section 334 of Title 32, National Guard, section 2458a of Title 42, The Public Health and Welfare, and provisions set out as notes under this section and section 334 of Title 32] shall become effective on the date of its enactment [Oct. 8, 1976] and shall apply only to those claims accruing on or after such date of enactment.''

CONGRESSIONAL FINDINGS

Section 2(a) of Pub. L. 94–464 provided that: ''The Congress finds—

''(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

''(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

''(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

''(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises.''

§ 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard

when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

(Added Pub. L. 97–295, § 1(15)(A), Oct. 12, 1982, 96 Stat. 1290; amended Pub. L. 98–94, title XII, § 1268(7), Sept. 24, 1983, 97 Stat. 706; Pub. L. 101–510, div. A, title V, § 553, Nov. 5, 1990, 104 Stat. 1567.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1090	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, § 501(a)(1), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus.

AMENDMENTS

1990—Pub. L. 101–510 inserted '', and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1983—Pub. L. 98–94 struck out ''(a)'' before ''The Secretary of Defense''.

§ 1091. Personal services contracts

(a) AUTHORITY.—The Secretary of Defense may enter into personal services contracts to carry out health care responsibilities in medical treatment facilities of the Department of Defense, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(b) LIMITATION ON AMOUNT OF COMPENSATION.—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) PROCEDURES.—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.

(d) EXCEPTIONS.—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added Pub. L. 98–94, title IX, § 932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended Pub. L. 101–510, div. A, title VII, § 714, Nov. 5, 1990, 104 Stat. 1584; Pub. L. 103–160, div. A, title VII, § 712(a)(1), Nov. 30, 1993, 107 Stat. 1688.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

''(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at a rate not greater than the rate of basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications in pay grade O–6 with 26 or more years of service computed under section 205 of such title.''

1990—Subsec. (b). Pub. L. 101–510 substituted ''basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications'' for ''basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer''.

EFFECTIVE DATE

Section 932(f) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting this section, amending section 201 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4022 and 9022 of this title and section 421 of Title 37] shall take effect on October 1, 1983. Any contract of employment entered into under the authority of section 4022 or 9022 of title 10, United States Code, before the effective date of this section and which is in effect on such date shall remain in effect in accordance with the terms of such contract.''

PERSONAL SERVICE CONTRACTS TO PROVIDE CARE

Pub. L. 103–337, div. A, title VII, § 704(c), Oct. 5, 1994, 108 Stat. 2799, provided that:

''(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.

''(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.''

REPORT ON COMPENSATION BY MEDICAL SPECIALTY

Section 712(b) of Pub. L. 103–160 provided that: ''Not later than 30 days after the end of the 180-day period be-

ginning on the date on which the Secretary of Defense first uses the authority provided under section 1091 of title 10, United States Code (as amended by subsection (a)(1)), the Secretary shall submit to Congress a report specifying—

''(1) the compensation, by medical specialty, provided by the Secretary to individuals agreeing to enter into a personal services contract under such section during that period;

''(2) the extent to which the amounts of such compensation exceed the amounts previously provided by the Secretary for individuals in such medical specialties;

''(3) the total number and medical specialties of individuals serving in military medical treatment facilities during that period pursuant to such a contract; and

''(4) the number of such individuals (and their medical specialties) who are receiving compensation under such a contract in an amount in excess of the maximum amount authorized under such section, as such section was in effect on the day before the date of the enactment of this Act [Nov. 30, 1993].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1072 of this title.

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(3) The Secretary of Defense shall submit to Congress from time to time written reports on the results of the studies and demonstration projects conducted under this subsection and shall include in such reports such recommendations for improving the health-care delivery systems of the uniformed services as the Secretary considers appropriate.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

(Added Pub. L. 98–94, title IX, § 933(a)(1), Sept. 24, 1983, 97 Stat. 650; amended Pub. L. 98–557, § 19(14), Oct. 30, 1984, 98 Stat. 2870.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

EFFECTIVE DATE

Section 933(b) of Pub. L. 98–94 provided that: ''Section 1092 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

DEMONSTRATION PROJECT ON MANAGEMENT OF HEALTH CARE IN CATCHMENT AREAS AND OTHER DEMONSTRATION PROJECTS

Pub. L. 100–180, div. A, title VII, § 731, Dec. 4, 1987, 101 Stat. 1117, directed Secretary of Defense to conduct, beginning in fiscal year 1988 for at least two years, projects designed to demonstrate the alternative health care delivery system under which the commander of a medical facility of the uniformed services is responsible for all funding and all medical care of the covered beneficiaries in the catchment area of the facility and to conduct specific projects for the purpose of demonstrating alternatives to providing health care under the military health care system, directed Secretary not later than 60 days after Dec. 4, 1987, to submit to Congress a report that provides an outline and discussion of the manner in which the Secretary intends to structure and conduct each demonstration project and to develop and submit to Congress a methodology to be used in evaluating the results of the demonstration projects, and submit to Congress an interim report on each demonstration project after such project has been in effect for at least 12 months and a final report on each such project when each project is completed.

CHIROPRACTIC HEALTH CARE DEMONSTRATION

Pub. L. 103–337, div. A, title VII, § 731, Oct. 5, 1994, 108 Stat. 2809, provided that:

''(a) REQUIREMENT FOR PROGRAM.—(1) Not later than 120 days after the date of enactment of this Act [Oct. 5, 1994], the Secretary of Defense shall develop and carry out a demonstration program to evaluate the feasibility and advisability of furnishing chiropractic care through the medical care facilities of the Armed Forces. The Secretary of Defense shall develop and carry out the program in consultation with the Secretaries of the military departments.

''(2) In carrying out the program, the Secretary of Defense shall—

''(A) subject to paragraph (3), designate not less than 10 major military medical treatment facilities of the Department of Defense to furnish chiropractic care under the program; and

''(B) enter into agreements with such number of chiropractors as the Secretary determines sufficient for the purposes of the program to furnish chiropractic care at such facilities under the program.

''(3) The Secretary may not designate under paragraph (2) any treatment facility that is located on a military installation scheduled for closure or realignment under a base closure law.

''(b) PROGRAM PERIOD.—The Secretary shall carry out the demonstration program in fiscal years 1995 through 1997.

''(c) REPORTING REQUIREMENTS.—(1) Not later than January 30, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on the demonstration program. The report shall—

''(A) identify the treatment facilities designated pursuant to subsection (a)(2)(A); and

''(B) include a discussion of the plan for the conduct of the program.

''(2) Not later than May 1, 1995, the Secretary of Defense shall submit to the committees referred to in paragraph (1) a plan for evaluating the program, including a schedule for conducting progress reviews and for submitting a final report to the committees.

''(3) The Secretary shall submit to the committees referred to in paragraph (1) a final report in accordance with the plan submitted to such committees pursuant to paragraph (2).

''(d) OVERSIGHT ADVISORY COMMITTEE.—(1) Not later than 30 days after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Defense shall establish an oversight advisory committee to assist and advise the Secretary with regard to the development and conduct of the demonstration program.

''(2) The oversight advisory committee shall include the following members:

''(A) The Comptroller General of the United States, or the designee of such person from within the General Accounting Office.

''(B) The Assistant Secretary of Defense for Health Affairs, or the designee of such person.

''(C) The Surgeons General of the Army, the Air Force, and the Navy, or the designees of such persons.

''(D) No fewer than four independent representatives of the chiropractic health care profession, appointed by the Secretary of Defense.

''(3) The oversight advisory committee shall assist the Secretary of Defense regarding—

''(A) issues involving the professional credentials of the chiropractors participating in the program;

''(B) the granting of professional practice privileges for the chiropractors at the treatment facilities participating in the program;

''(C) the preparation of the reports required under subsection (c); and

''(D) the evaluation of the program.

''(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee.

''(e) DEFINITION.—For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.''

Pub. L. 98–525, title VI, §632(b), Oct. 19, 1984, 98 Stat. 2543, provided that: ''The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall conduct demonstration projects under section 1092 of title 10, United States Code, for the purpose of evaluating the cost-effectiveness of chiropractic care. In the conduct of such demonstration projects, chiropractic care (including manual manipulation of the spine and other routine chiropractic procedures authorized under joint regulations prescribed by the Secretary of Defense and the Secretary of Health and Human Services and not otherwise prohibited by law) may be provided as appropriate under chapter 55 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1100 of this title.

§1093. Restriction on use of funds for abortions

Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(Added Pub. L. 98–525, title XIV, §1401(e)(5)(A), Oct. 19, 1984, 98 Stat. 2617.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8044], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, §751, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §755], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, §757, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, §760, Dec. 15, 1980, 94 Stat. 3091.

Pub. L. 96–154, title VII, §762, Dec. 21, 1979, 93 Stat. 1162.

Pub. L. 95–457, title VIII, §863, Oct. 13, 1978, 92 Stat. 1254.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

PRIVATELY FUNDED ABORTIONS AT MILITARY HOSPITALS

Memorandum of the President of the United States, Jan. 22, 1993, 58 F.R. 6439, provided:

Memorandum for the Secretary of Defense

Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense (''DOD'') funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual

circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d) In this section:

(1) The term ''license''—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term ''health-care professional'' means a physician, dentist, clinical psychologist, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added Pub. L. 99–145, title VI, § 653(a)(1), Nov. 8, 1985, 99 Stat. 657; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(5), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title VI, § 653(e)(1), title XVI, § 1622(e)(3), Nov. 29, 1989, 103 Stat. 1463, 1605.)

AMENDMENTS

1989—Subsec. (c)(2). Pub. L. 101–189, § 653(e)(1), substituted ''subsections (c) and (e) through (h)'' for ''subsections (b) and (d) through (g)''.

Subsec. (d)(1). Pub. L. 101–189, § 1622(e)(3)(A), substituted ''The term 'license'' for '' 'License'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–189, § 1622(e)(3)(B), substituted ''The term 'health-care'' for '' 'Health-care''.

1986—Subsec. (d)(2). Pub. L. 99–661 realigned margin of par. (2) to conform to margin of par. (1).

EFFECTIVE DATE

Section 653(b) of Pub. L. 99–145 provided that: ''Section 1094 of title 10, United States Code, as added by subsection (a), does not apply during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1985] with respect to the provision of health care by any person who on the date of the enactment of this Act is a member of the Armed Forces.''

§ 1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers

(a)(1) In the case of a person who is a covered beneficiary, the United States shall have the right to collect from a third-party payer the reasonable costs of health care services incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the appropriate deductible or copayment amount.

(2) A covered beneficiary may not be required to pay an additional amount to the United States for health care services by reason of this section.

(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care shall operate to prevent collection by the United States under subsection (a) if that care is provided—

(1) through a facility of the uniformed services;

(2) directly or indirectly by a governmental entity;

(3) to an individual who has no obligation to pay for that care or for whom no other person has a legal obligation to pay; or

(4) by a provider with which the third party payer has no participation agreement.

(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided health care services to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

(d) Notwithstanding subsections (a) and (b), and except as provided in subsection (j), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of health care services. Computation of such reasonable cost may be based on—

(1) per diem rates;
(2) all-inclusive per visit rates;
(3) diagnosis-related groups; or
(4) such other method as may be appropriate.

(g)(1) Amounts collected under this section from a third-party payer or under any other provision of law from any other payer for the costs of health care services provided at a facility of the uniformed services shall be credited to the appropriation supporting the maintenance and operation of the facility and shall not be taken into consideration in establishing the operating budget of the facility.

(2) Not later than February 15 of each year, the Secretary of Defense shall submit to Congress a report specifying for each facility of the uniformed services the amount credited to the facility under this subsection during the preceding fiscal year.

(h) In this section:

(1) The term ''third-party payer'' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier. Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.

(2) The term ''insurance, medical service, or health plan'' includes a preferred provider organization and an insurance plan described as Medicare supplemental insurance.

(3) The term ''health care services'' includes products provided or purchased through a facility of the uniformed services.

(i)(1) In the case of a third-party payer that is an automobile liability insurance or no fault insurance carrier, the right of the United States to collect under this section shall extend to health care services provided to a person entitled to health care under section 1074(a) of this title.

(2) In cases in which a tort liability is created upon some third person, collection from a third-party payer that is an automobile liability insurance carrier shall be governed by the provisions of Public Law 87–693 (42 U.S.C. 2651 et seq.).

(j) The Secretary of Defense may enter into an agreement with any health maintenance organization, competitive medical plan, health care prepayment plan, or other similar plan (pursuant to regulations issued by the Secretary) providing for collection under this section from such organization or plan for services provided to a covered beneficiary who is an enrollee in such organization or plan.

(Added Pub. L. 99–272, title II, § 2001(a)(1), Apr. 7, 1986, 100 Stat. 100; amended Pub. L. 101–189, div. A, title VII, § 727(a), title XVI, § 1622(e)(5), Nov. 29, 1989, 103 Stat. 1480, 1605; Pub. L. 101–510, div. A, title VII, § 713(a)–(d)(2), Nov. 5, 1990, 104 Stat. 1583, 1584; Pub. L. 102–25, title VII, § 701(j)(8), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–190, div. A, title VII, § 714, Dec. 5, 1991, 105 Stat. 1403; Pub. L. 103–160, div. A, title VII, § 713, Nov. 30, 1993, 107 Stat. 1689; Pub. L. 103–337, div. A, title VII, § 714(b), title X, § 1070(b)(6), Oct. 5, 1994, 108 Stat. 2802, 2857.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Public Law 87–693, referred to in subsec. (i)(2), is Pub. L. 87–693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§ 2651 et seq.) of Title 42. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 1095 was renumbered section 1095a of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–337, § 714(b)(1), substituted ''shall operate to prevent collection by the United States under subsection (a) if that care is provided—'' and pars. (1) to (4) for ''if that care is provided through a facility of the uniformed services shall operate to prevent collection by the United States under subsection (a).''

Subsec. (d). Pub. L. 103–337, § 714(b)(2), inserted ''and except as provided in subsection (j),'' after ''(b),''.

Subsec. (g). Pub. L. 103–337, § 1070(b)(6), made technical correction to directory language of Pub. L. 103–160, § 713(a)(1). See 1993 Amendment note below.

Subsec. (h)(1). Pub. L. 103–337, § 714(b)(3), inserted at end ''Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.''

Subsec. (j). Pub. L. 103–337, § 714(b)(4), added subsec. (j).

1993—Subsec. (g). Pub. L. 103–160, § 713(c), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–160, § 713(a)(2), inserted before period ''and shall not be taken into consideration in establishing the operating budget of the facility''.

Pub. L. 103–160, § 713(a)(1), as amended by Pub. L. 103–337, § 1070(b)(6), inserted ''or under any other provision of law from any other payer'' after ''third-party payer''.

Subsec. (h). Pub. L. 103–160, § 713(b), inserted ''a preferred provider organization and'' after ''includes'' in par. (2) and added par. (3).

1991—Subsec. (a)(1). Pub. L. 102–25 inserted ''a'' before ''covered beneficiary''.

Subsec. (i)(2). Pub. L. 102–190 struck out ''or no fault insurance'' before ''carrier''.

1990—Pub. L. 101–510, § 713(d)(2), substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in section catchline.

Subsec. (a)(1). Pub. L. 101–510, § 713(d)(1)(A), substituted ''covered beneficiary'' for ''covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (a)(2). Pub. L. 101–510, § 713(d)(1)(B), substituted ''covered beneficiary'' for ''person covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (c). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (f). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care'' in introductory provisions.

Subsec. (f)(2) to (4). Pub. L. 101–510, § 713(b), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (g). Pub. L. 101–510, § 713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsecs. (h), (i). Pub. L. 101–510, § 713(c), added subsecs. (h) and (i) and struck out former subsec. (h) which read as follows: ''In this section, the term 'third-party payer' means an entity that provides an insurance,

medical service, or health plan by contract or agreement.''

1989—Subsec. (g). Pub. L. 101–189, § 727(a)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101–189, § 1622(e)(5), which directed amendment of subsec. (g) by insertion of ''the term'' after ''In this section,'' was executed by making the insertion in subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by Pub. L. 101–189, § 727(a)(1), see below.

Pub. L. 101–189, § 727(a)(1), redesignated subsec. (g) as (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 713(e) of Pub. L. 101–510 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to health care services provided in a medical facility of the uniformed services after the date of the enactment of this Act [Nov. 5, 1990], but not with respect to collection under any insurance, medical service, or health plan agreement entered into before the date of the enactment of this Act that the Secretary of Defense determines clearly excludes payment for such services. Such an exception shall apply until the amendment or renewal of such agreement after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 727(b) of Pub. L. 101–189 provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1989, and shall apply to amounts collected under section 1095 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE

Section 2001(b) of Pub. L. 99–272 provided that: ''Section 1095 of title 10, United States Code, as added by subsection (a), shall apply with respect to inpatient hospital care provided after September 30, 1986, but only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1086 of this title.

§ 1095a. Medical care: members held as captives and their dependents

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) any person who is a former captive, and any dependent of that person or of a person who is in a captive status, for health care and other expenses related to such care, to the extent that such care—

(1) is incident to the captive status; and

(2) is not covered—

(A) by any other Government medical or health program; or

(B) by insurance.

(b) In the case of any person who is eligible for medical care under section 1074 or 1076 of this title, such regulations shall require that, whenever practicable, such care be provided in a facility of the uniformed services.

(c) In this section:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, § 806(c)(1), Aug. 27, 1986, 100 Stat. 886, § 1095; renumbered § 1095a, Pub. L. 100–26, § 7(e)(2), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 100–526, title I, § 106(b)(1), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–526 substituted ''The terms 'captive status' '' for '' 'Captive status' '' in par. (1), and ''The term 'dependent' '' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE; REGULATIONS

Section 806(c)(3) of Pub. L. 99–399 provided that:

''(A) Section 1095 [now 1095a] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any person whose captive status begins after January 21, 1981.

''(B) The President shall prescribe specific regulations regarding the carrying out of such section with respect to persons whose captive status begins during the period beginning on January 21, 1981, and ending on the effective date of that section [Aug. 27, 1986].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 1013.

§ 1096. Military-civilian health services partnership program

(a) RESOURCES SHARING AGREEMENTS.—The Secretary of Defense may enter into an agreement providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers that the Secretary contracts with under section 1079, 1086, or 1097 of this title if the Secretary determines that such an agreement would result in the delivery of health care to which covered beneficiaries are entitled under this chapter in a more effective, efficient, or economical manner.

(b) ELIGIBLE RESOURCES.—An agreement entered into under subsection (a) may provide for the sharing of—

(1) personnel (including support personnel);

(2) equipment;

(3) supplies; and

(4) any other items or facilities necessary for the provision of health care services.

(c) COMPUTATION OF CHARGES.—A covered beneficiary, with respect to care provided to such beneficiary in facilities of the uniformed services under a sharing agreement entered into under subsection (a), shall pay—

(1) in the case of a dependent, the charges prescribed by section 1078 of this title; and

(2) in the case of a member or former member entitled to retired or retainer pay, the charges prescribed by section 1075 of this title.

(d) REIMBURSEMENT FOR LICENSE FEES.—In any case in which it is necessary for a member of the uniformed services to pay a professional license fee imposed by a government in order to provide

health care services at a facility of a civilian health care provider pursuant to an agreement entered into under subsection (a), the Secretary of Defense may reimburse the member for up to $500 of the amount of the license fee paid by the member.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3894; amended Pub. L. 103–337, div. A, title VII, §712, Oct. 5, 1994, 108 Stat. 2801.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337 added subsec. (d).

§1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

(a) IN GENERAL.—The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

(1) Health maintenance organizations.

(2) Preferred provider organizations.

(3) Individual providers, individual medical facilities, or insurers.

(4) Consortiums of such providers, facilities, or insurers.

(b) SCOPE OF COVERAGE UNDER HEALTH CARE PLANS.—A contract entered into under this section may provide for the delivery of—

(1) selected health care services;

(2) total health care services for selected covered beneficiaries; or

(3) total health care services for all covered beneficiaries who reside in a geographical area designated by the Secretary.

(c) COORDINATION WITH FACILITIES OF THE UNIFORMED SERVICES.—The Secretary of Defense may provide for the coordination of health care services provided pursuant to any contract or agreement under this section with those services provided in medical treatment facilities of the uniformed services. Subject to the availability of space and facilities and the capabilities of the medical or dental staff, the Secretary may not deny access to facilities of the uniformed services to a covered beneficiary on the basis of whether the beneficiary enrolled or declined enrollment in any program established under, or operating in connection with, any contract under this section. However, the Secretary may, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section.

(d) COORDINATION WITH OTHER HEALTH CARE PROGRAMS.—In the case of a covered beneficiary who is enrolled in a managed health care program not operated under the authority of this chapter, the Secretary may contract under this section with such other managed health care program for the purpose of coordinating the beneficiary's dual entitlements under such program and this chapter. A managed health care program with which arrangements may be made under this subsection includes any health maintenance organization, competitive medical plan, health care prepayment plan, or other managed care program recognized pursuant to regulations issued by the Secretary.

(e) CHARGES FOR HEALTH CARE.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 103–337, div. A, title VII, §§713, 714(a), Oct. 5, 1994, 108 Stat. 2802.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337, §714(a)(2), added subsec. (c). Former subsec. (c) redesignated (e).

Pub. L. 103–337, §713, inserted at end "In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans."

Subsecs. (d), (e). Pub. L. 103–337, §714(a), added subsec. (d) and redesignated former subsec. (c) as (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1096, 1100 of this title.

§1098. Incentives for participation in cost-effective health care plans

(a) WAIVER OF LIMITATIONS AND COPAYMENTS.—Subject to subsection (b), the Secretary of Defense, with respect to any plan contracted for under the authority of section 1079 or 1086 of this title, may waive, in whole or in part—

(1) any limitation set out in the second sentence of section 1079(a) of this title; or

(2) any requirement for payment by the patient under section 1079(b) or 1086(b) of this title.

(b) DETERMINATION AND REPORT.—(1) Subject to paragraph (3), the Secretary may waive a limitation or requirement as authorized by subsection (a) if the Secretary determines that during the period of the waiver such a plan will—

(A) be less costly to the Government than a plan subject to such limitations or payment requirements; or

(B) provide better services than those provided by a plan subject to such limitations or

payment requirements at no additional cost to the Government.

(2) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report with respect to a waiver under paragraph (1), including a comparison of costs of and benefits available under—

(A) a plan with respect to which the limitations and payment requirements are waived; and

(B) a plan with respect to which there is no such waiver.

(3) A waiver under paragraph (1) may not take effect until the end of the 180-day period beginning on the date on which the Secretary submits the report required by paragraph (2) with respect to such waiver.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 101–510, div. A, title XIV, § 1484(h)(1), Nov. 5, 1990, 104 Stat. 1717.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510 substituted ''subsection (b)'' for ''subsections (b) and (c)'' in introductory provisions.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 1099. Health care enrollment system

(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM.—Such system shall—

(1) allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

(1) Use of facilities of the uniformed services.

(2) The Civilian Health and Medical Program of the Uniformed Services.

(3) Any other health care plan contracted for by the Secretary of Defense.

(4) Any combination of the plans described in paragraphs (1), (2), and (3).

(d) REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3896.)

REGULATIONS

Section 701(d)(1), (2) of Pub. L. 99–661 provided that:

''(1) Except as provided in paragraph (2), the Secretary of Defense shall prescribe regulations as required by section 1099(d) of title 10, United States Code (as added by subsection (a)(1)) to implement the system of health care enrollment for covered beneficiaries—

''(A) on October 1, 1987, with respect to—

''(i) covered beneficiaries included in the demonstration project required under section 702 [10 U.S.C. 1073 note]; and

''(ii) facilities of the uniformed services located in the geographical area covered by the demonstration project; and

''(B) not later than September 30, 1990, for all other covered beneficiaries and facilities of the uniformed services.

''(2) The Secretary may not assign covered beneficiaries to facilities of the uniformed services, as authorized by section 1099(b)(2) of such title (as added by subsection (a)(1)), before October 1, 1990.''

REPORTS TO CONGRESS

Section 701(c)(1) of Pub. L. 99–661 required Secretary of Defense, not later than July 1, 1987, to submit to Congress a report detailing any plans to establish or implement a system of health care enrollment (other than as required under section 702(a)(2)(C)) under section 1099(a) of this title and the plan of the Secretary for completing implementation of such system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1097 of this title.

§ 1100. Military Health Care Account

(a) ESTABLISHMENT OF ACCOUNT.—(1) There is hereby established in the Department of Defense an account to be known as the ''Military Health Care Account''. All sums appropriated to carry out the functions of the Secretary of Defense with respect to the Civilian Health and Medical Program of the Uniformed Services shall be appropriated to the account.

(2) Amounts appropriated to the account shall remain available until obligated or expended under subsection (b) or (c).

(b) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of entering into a contract under section 1079, 1086, 1092, or 1097 of this title to the extent amounts are available in the account.

(c) ALLOCATION OF AMOUNTS IN ACCOUNT FOR PROVISION OF MEDICAL CARE BY SERVICE SECRETARIES.—(1) The Secretary of a military department shall, before the beginning of a fiscal year quarter, provide to the Secretary of Defense an estimate of the amounts necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of the Secretary for that quarter.

(2) The Secretary of Defense shall, subject to amounts provided in advance in appropriation Acts, make available to each Secretary of a military department the amount from the account that the Secretary of Defense determines is necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of such Secretary for that quarter.

(d) EXPENDITURE OF AMOUNTS FROM ACCOUNT BY SERVICE SECRETARIES.—The Secretary of a

military department shall provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for a fiscal year quarter from amounts appropriated to the Secretary and from amounts from the account made available for that quarter to the Secretary by the Secretary of Defense. If the Secretary of a military department exhausts the amounts from the account made available to the Secretary for a fiscal year quarter, the Secretary shall transfer to the account from amounts appropriated to the Secretary an amount sufficient to provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for the remainder of the fiscal year quarter.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term ''account'' means the Military Health Care Account established in subsection (a).

(2) The term ''program'' means the Civilian Health and Medical Program of the Uniformed Services.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3896.)

EFFECTIVE DATE

Section 701(d)(3) of Pub. L. 99–661 provided that: ''Section 1100 of such title (as added by subsection (a)(1)) shall take effect on October 1, 1987.''

REPORTS TO CONGRESS

Section 701(c)(2) of Pub. L. 99–661 required Secretary to submit to Congress not later than May 1, 1987, a report on plans of Secretary for establishing diagnosis-related groups for inpatient services under section 1100(a) of this title, and not later than May 1, 1988, a report on plans of Secretary for establishing diagnosis-related groups for outpatient services under such section.

§1101. Resource allocation methods: capitation or diagnosis-related groups

(a) ESTABLISHMENT OF CAPITATION OR DRG METHOD.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of capitation or diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

(b) EXCEPTION FOR MOBILIZATION MISSIONS.—Capitation or diagnosis-related groups shall not be used to allocate resources to the facilities of the uniformed services to the extent that such resources are required by such facilities for mobilization missions.

(c) CONTENT OF REGULATIONS.—Such regulations may establish a system of diagnosis-related groups similar to the system established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations may include the following:

(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

(2) A methodology for classifying specific treatments within such groups.

(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.

(4) An appropriate method for calculating or estimating the annual per capita costs of providing comprehensive health care services to members of the uniformed services on active duty and covered beneficiaries.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3897; amended Pub. L. 100–456, div. A, title XII, §1233(e)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 103–160, div. A, title VII, §714(a), (b)(1), Nov. 30, 1993, 107 Stat. 1690.)

AMENDMENTS

1993—Pub. L. 103–160, §714(b)(1), substituted ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' as section catchline.

Subsec. (a). Pub. L. 103–160, §714(a)(1), substituted ''Capitation or DRG Method'' for ''DRGs'' in heading and inserted ''capitation or'' before ''diagnosis-related groups'' in text.

Subsec. (b). Pub. L. 103–160, §714(a)(2), substituted ''Capitation or diagnosis-related groups'' for ''Diagnosis-related groups''.

Subsec. (c). Pub. L. 103–160, §714(a)(3), substituted ''may'' for ''shall'' in two places in introductory provisions and added par. (4).

1988—Subsec. (c). Pub. L. 100–456 struck out ''(1)'' before ''Such regulations'' in introductory provisions.

REGULATIONS

Pub. L. 101–189, div. A, title VII, §724, Nov. 29, 1989, 103 Stat. 1478, as amended by Pub. L. 102–190, div. A, title VII, §719, Dec. 5, 1991, 105 Stat. 1404, provided that: ''The regulations required by section 1101(a) of title 10, United States Code, to establish the use of diagnosis-related groups as the primary criteria for the allocation of resources to health care facilities of the uniformed services shall be prescribed to take effect not later than October 1, 1993, in the case of outpatient treatments.''

Section 701(d)(4) of Pub. L. 99–661, as amended by Pub. L. 100–180, div. A, title VII, §724, Dec. 4, 1987, 101 Stat. 1116, provided that: ''The Secretary of Defense shall prescribe regulations as required by section 1101(a) of such title (as added by subsection (a)(1)) to take effect—

''(A) in the case of inpatient treatments, not later than October 1, 1988; and

''(B) in the case of outpatient treatments, not later than October 1, 1989.''

§1102. Confidentiality of medical quality assurance records: qualified immunity for participants

(a) CONFIDENTIALITY OF RECORDS.—Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) PROHIBITION ON DISCLOSURE AND TESTIMONY.—(1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding

that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) AUTHORIZED DISCLOSURE AND TESTIMONY.—(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5.

(d) DISCLOSURE FOR CERTAIN PURPOSES.—(1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.

(e) PROHIBITION ON DISCLOSURE OF RECORD OR TESTIMONY.—A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

(f) EXEMPTION FROM FREEDOM OF INFORMATION ACT.—Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5.

(g) LIMITATION ON CIVIL LIABILITY.—A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

(h) APPLICATION TO INFORMATION IN CERTAIN OTHER RECORDS.—Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a medical quality assurance program.

(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(j) DEFINITIONS.—In this section:

(1) The term ''medical quality assurance program'' means any activity carried out before, on, or after November 14, 1986 by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review and identification and prevention of medical or dental incidents and risks.

(2) The term ''medical quality assurance record'' means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

(3) The term ''health care provider'' means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

(k) PENALTY.—Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(Added Pub. L. 99–661, div. A, title VII, §705(a)[(1)], Nov. 14, 1986, 100 Stat. 3902; amended Pub. L. 100–180, div. A, title XII, §1231(5), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title VI, §653(f), Nov. 29, 1989, 103 Stat. 1463.)

AMENDMENTS

1989—Subsec. (j)(1). Pub. L. 101–189 substituted ''November 14, 1986'' for ''the date of the enactment of this section''.

1987—Subsec. (c)(2). Pub. L. 100–180 struck out '', United States Code'' after ''title 5'' in second sentence.

EFFECTIVE DATE

Section 705(b) of Pub. L. 99–661 provided that: ''Section 1102 of title 10, United States Code, as added by subsection (a), shall apply to all records created before, on, or after the date of the enactment of this Act [Nov. 14, 1986] by or for the Department of Defense as part of a medical quality assurance program.''

§1103. Contracts for medical and dental care: State and local preemption

(a) OCCURRENCE OF PREEMPTION.—A law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to this chapter by the Secretary of Defense or the administering Secretaries to the extent that the Secretary of Defense or the administering Secretaries determine that—

(1) the State or local law or regulation is inconsistent with a specific provision of the contract or a regulation promulgated by the Secretary of Defense or the administering Secretaries pursuant to this chapter; or

(2) the preemption of the State or local law or regulation is necessary to implement or administer the provisions of the contract or to achieve any other important Federal interest.

(b) EFFECT OF PREEMPTION.—In the case of the preemption under subsection (a) of a State or local law or regulation regarding financial solvency, the Secretary of Defense or the administering Secretaries shall require an independent audit of the prime contractor of each contract that is entered into pursuant to this chapter and covered by the preemption. The audit shall be performed by the Defense Contract Audit Agency.

(c) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each Territory and possession of the United States.

(Added Pub. L. 100–180, div. A, title VII, §725(a)(1), Dec. 4, 1987, 101 Stat. 1116; amended Pub. L. 103–160, div. A, title VII, §715(a), Nov. 30, 1993, 107 Stat. 1690.)

AMENDMENTS

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) The provisions of any contract under this chapter which relate to the nature and extent of coverage of benefits (including payments with respect to benefits) shall preempt any law of a State or local government, or any regulation issued under such a law, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

''(b) In this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 715(b) of Pub. L. 103–160 provided that: ''Section 1103 of title 10, United States Code, as amended by subsection (a), shall apply with respect to any contract entered into under chapter 55 of such title before, on, or after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE

Section 725(b) of Pub. L. 100–180 provided that: ''Section 1103 of such title, as added by subsection (a), shall apply with respect to any contract entered into after October 1, 1987.''

APPLICABILITY OF PREEMPTION PROVISIONS TO CERTAIN CONTRACTS

Pub. L. 102–396, title IX, §9032, Oct. 6, 1992, 106 Stat. 1908, as amended by Pub. L. 103–50, ch. III, §301, July 2, 1993, 107 Stat. 250, provided in part ''That the preemption provisions of section 1103(a) of title 10, United States Code, shall not be limited to contractual provisions relating to coverage of benefits, but shall apply to all contracts entered into pursuant to this general provision, the California and Hawaii recompetition contract, and Solicitation Number MDA 906–92–R–0004 and shall preempt any and all State and local laws and regulations which relate to health insurance or health care plans''.

APPLICABILITY TO CONTRACTS ENTERED INTO PURSUANT TO SOLICITATION NUMBER MDA–903–87–R–0047

Pub. L. 100–463, title VIII, §8078(b), Oct. 1, 1988, 102 Stat. 2270–30, provided that preemption provisions of 10 U.S.C. 1103 shall apply to contracts entered into pursuant to Solicitation Number MDA–903–87–R–0047 and shall preempt State and local laws or regulations which relate to health insurance or prepaid health care plans.

Similar provisions were contained in the following prior appropriation act:

Pub. L. 100–202, §101(b) [title VIII, §8104(b)], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§1104. Sharing of health-care resources with the Department of Veterans Affairs

(a) SHARING OF HEALTH-CARE RESOURCES.—Health-care resources of the Department of Defense may be shared with health-care resources of the Department of Veterans Affairs in accordance with section 8111 of title 38 or under section 1535 of title 31.

(b) REIMBURSEMENT FROM CHAMPUS FUNDS.—Pursuant to an agreement entered into under section 8111 of title 38 or section 1535 of title 31, the Secretary of a military department may reimburse the Secretary of Veterans Affairs from funds available for that military department for the payment of medical care provided under section 1079 or 1086 of this title.

(c) CHARGES.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided to covered beneficiaries under this chapter pursuant to an agreement entered into by the Secretary of a military department under section 8111 of title 38 or section 1535 of title 31.

(d) PROVISION OF SERVICES DURING WAR OR NATIONAL EMERGENCY.—Members of the armed forces on active duty during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict, may be provided health-care services by the Department of Veterans Affairs in accordance with section 8111A of title 38.

(Added Pub. L. 101–189, div. A, title VII, § 722(a), Nov. 29, 1989, 103 Stat. 1477; amended Pub. L. 102–484, div. A, title X, § 1052(14), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–35, title II, § 201(c)(1), May 31, 1993, 107 Stat. 98.)

AMENDMENTS

1993—Subsecs. (a) to (c). Pub. L. 103–35, § 201(c)(1)(A), substituted ''section 8111 of title 38'' for ''section 8011 of title 38''.

Subsec. (d). Pub. L. 103–35, § 201(c)(1)(B), substituted ''section 8111A of title 38'' for ''section 8011A of title 38''.

1992—Subsecs. (a) to (c). Pub. L. 102–484, § 1052(14)(A), substituted ''section 8011 of title 38'' for ''section 5011 of title 38''.

Subsec. (d). Pub. L. 102–484, § 1052(14)(B), substituted ''section 8011A of title 38'' for ''section 5011A of title 38''.

§ 1105. Specialized treatment facility program

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a specialized treatment facility program pursuant to regulations prescribed by the Secretary of Defense. The Secretary shall consult with the other administering Secretaries in prescribing regulations for the program and in conducting the program.

(b) FACILITIES AUTHORIZED TO BE USED.—Under the specialized treatment facility program, the Secretary may designate health care facilities of the uniformed services and civilian health care facilities as specialized treatment facilities.

(c) WAIVER OF NONEMERGENCY HEALTH CARE RESTRICTION.—Under the specialized treatment facility program, the Secretary may waive, with regard to the provision of a particular service, the 40-mile radius restriction set forth in section 1079(a)(7) of this title if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service.

(d) CIVILIAN FACILITY SERVICE AREA.—For purposes of the specialized treatment facility program, the service area of a civilian health care facility designated pursuant to subsection (b) shall be comparable in size to the service areas of facilities of the uniformed services.

(e) ISSUANCE OF NONAVAILABILITY OF HEALTH CARE STATEMENTS.—A covered beneficiary who resides within the service area of a specialized treatment facility designated under the specialized treatment facility program may be required to obtain a nonavailability of health care statement in the case of a specialized service offered by the facility in order for the covered beneficiary to receive the service outside of the program.

(f) PAYMENT OF COSTS RELATED TO CARE IN SPECIALIZED TREATMENT FACILITIES.—(1) Subject to paragraph (2), in connection with the treatment of a covered beneficiary under the specialized treatment facility program, the Secretary may provide the following benefits:

(A) Full or partial reimbursement of a member of the uniformed services for the reasonable expenses incurred by the member in transporting a covered beneficiary to or from a health care facility of the uniformed services or a civilian health care facility at which specialized health care services are provided pursuant to this chapter.

(B) Full or partial reimbursement of a person (including a member of the uniformed services) for the reasonable expenses of transportation, temporary lodging, and meals (not to exceed a per diem rate determined in accordance with implementing regulations) incurred by such person in accompanying a covered beneficiary as a nonmedical attendant to a health care facility referred to in subparagraph (A).

(C) In-kind transportation, lodging, or meals instead of reimbursements under subparagraph (A) or (B) for transportation, lodging, or meals, respectively.

(2) The Secretary may make reimbursements for or provide transportation, lodging, and meals under paragraph (1) in the case of a covered beneficiary only if the total cost to the Department of Defense of doing so and of providing the health care in such case is less than the cost to the Department of providing the health care to the covered beneficiary by other means authorized under this chapter.

(g) COVERED BENEFICIARY DEFINED.—In this section, the term ''covered beneficiary'' means a person covered under section 1079 or 1086 of this title.

(h) EXPIRATION OF PROGRAM.—The Secretary may not carry out the specialized treatment facility program authorized by this section after September 30, 1995.

(Added Pub. L. 102–190, div. A, title VII, § 715(a), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L. 103–160, div. A, title VII, § 716(a)(1), Nov. 30, 1993, 107 Stat. 1691.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Specialized treatment facility program'' for ''Issuance of nonavailability of health care statements'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''In determining whether to issue a nonavailability of health care statement for any person entitled to health care in facilities of the uniformed services under this chapter, the commanding officer of such a facility may consider the availability of health care services for such person pursuant to any

contract or agreement entered into under this chapter for the provision of health care services within the area served by that facility.''

§1106. Submittal of claims under CHAMPUS

(a) SUBMITTAL TO CLAIMS PROCESSING OFFICE.—Each provider of services under the Civilian Health and Medical Program of the Uniformed Services shall submit claims for payment for such services directly to the claims processing office designated pursuant to regulations prescribed under subsection (b). A claim for payment for services shall be submitted in a standard form (as prescribed in the regulations) not later than one year after the services are provided.

(b) REGULATIONS.—The regulations required by subsection (a) shall be prescribed by the Secretary of Defense after consultation with the other administering Secretaries.

(c) WAIVER.—The Secretary of Defense may waive the requirements of subsection (a) if the Secretary determines that the waiver is necessary in order to ensure adequate access for covered beneficiaries to health care services under this chapter.

(Added Pub. L. 102–190, div. A, title VII, §716(a)(1), Dec. 5, 1991, 105 Stat. 1403.)

REGULATIONS

Section 716(b) of Pub. L. 102–190 provided that: ''The regulations required by section 1106 of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

NATIONAL CLAIMS PROCESSING SYSTEM FOR CHAMPUS

Pub. L. 102–484, div. A, title VII, §711, Oct. 23, 1992, 106 Stat. 2433, provided that:

''(a) CLAIMS PROCESSING SYSTEM REQUIRED.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall provide by contract for the operation of a claims processing system to be known as the 'National Claims Processing System for CHAMPUS'. The Secretary may procure the system in installments, including the use of incremental modules. The system, including completion and integration of all modules, shall be in full operation not later than seven years after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary shall use competitive procedures for entering into any contract or contracts under paragraph (1).

''(b) SYSTEM FUNCTIONS.—The claims processing system shall include at least the following functions:

''(1) The maintenance in electronic or written form, or both, of appropriate information on health care services provided to covered beneficiaries by or through third parties under CHAMPUS or any alternative CHAMPUS program or demonstration project. Such information shall include—

''(A) the services to which such beneficiaries are entitled or eligible under an insurance plan, medical service plan, or health plan under CHAMPUS;

''(B) the insurers, medical services, or health plans that provide such services; and

''(C) the services available to beneficiaries under each insurance plan, medical service plan, or health plan, and the payment required of the beneficiaries and the insurer, medical service, or health plan for such services under the plan.

''(2) The ability to receive in electronic or written form claims submitted by insurers, medical services, and health plans for services provided to covered beneficiaries.

''(3) The ability to process, adjudicate, and pay (by electronic or other means) such claims.

''(4) The provision of the information described in paragraphs (1) and (2) and information on the matters referred to in paragraph (3) by telephone, electronic, or other means to covered beneficiaries, insurers, medical services, and health plans.

''(c) CONSISTENCY WITH MEDICARE CLAIMS REQUIREMENTS.—The Secretary of Defense shall ensure, to the maximum extent practicable, that claims submitted to the claims processing system conform to the requirements applicable to claims submitted to the Secretary of Health and Human Services with respect to medical care provided under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(d) IDENTIFICATION CARD.—The Secretary of Defense shall take appropriate actions to determine whether the use by covered beneficiaries of a standard identification card containing electronically readable information will enhance the capability of the claims processing center to carry out the activities set forth in subsection (b).

''(e) TRANSITION TO SYSTEM.—After January 1, 1996, any modification or acquisition related to claims processing systems operations in the Office of the Civilian Health and Medical Program of the Uniformed Services shall contain provisions to transfer such operations to the claims processing system required by subsection (a). After January 1, 1999, any renewal or acquisition for fiscal intermediary services (including coordinated care implementations in military hospitals and clinics) shall contain provisions to transfer claims processing systems operations related to such fiscal intermediary services to the claims processing system required by subsection (a).

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'administering Secretaries' has the meaning given that term in paragraph (3) of section 1072 of title 10, United States Code.

''(2) The term 'CHAMPUS' means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of such section.

''(3) The term 'covered beneficiary' has the meaning given that term in paragraph (5) of such section.''

CHAPTER 57—DECORATIONS AND AWARDS

Sec.
1121. Legion of Merit: award.
1122. Medal for Merit: award.
1123. Right to wear badges of military societies.
1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements.
1125. Recognition for accomplishments: award of trophies.
1126. Gold star lapel button: eligibility and distribution.
1127. Precedence of the award of the Purple Heart.
1128. Prisoner-of-war medal: issue.
1129. Purple Heart: members killed or wounded in action by friendly fire.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, §1141(b), Nov. 30, 1993, 107 Stat. 1757, added item 1129.

1985—Pub. L. 99–145, title V, §532(a)(2), title XII, §1225(a)(2)(B), Nov. 8, 1985, 99 Stat. 634, 730, inserted ''disclosures,'' and substituted ''and'' for ''or'' in item 1124, and added item 1128.

1984—Pub. L. 98–525, title V, §553(b), Oct. 19, 1984, 98 Stat. 2532, added item 1127.

1966—Pub. L. 89–718, §9, Nov. 2, 1966, 80 Stat. 1117, redesignated item 1124, added by Pub. L. 89–534, §1(2), Aug. 11, 1966, 80 Stat. 345, as 1126.

Pub. L. 89–534, §1(2), Aug. 11, 1966, 80 Stat. 345, added item 1124, relating to eligibility for and distribution of gold star lapel button.

Pub. L. 89–529, §1(2), Aug. 11, 1966, 80 Stat. 339, added item 1125.

1965—Pub. L. 89–198, §1(2), Sept. 22, 1965, 79 Stat. 831, added item 1124, relating to payment of cash awards for

members of armed forces for suggestions, inventions, or scientific achievements.

EX. ORD. NO. 11448. MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 11448, Jan. 16, 1969, 34 F.R. 915, as amended by Ex. Ord. No. 12312, July 2, 1981, 46 F.R. 35251, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of a Military Department or the Secretary of Transportation with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders or other appropriate officers as the Secretary concerned may designate, to any member of the armed forces of the United States, or to any member of the armed forces of a friendly foreign nation, who has distinguished himself by outstanding meritorious achievement or service.

SEC. 2. The Meritorious Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

SEC. 3. No more than one Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

SEC. 4. The Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

EXECUTIVE ORDER NO. 11544

Ex. Ord. No. 11544, July 8, 1970, 35 F.R. 11115, which established a Vice Presidential Service Certificate and a Vice Presidential Service Badge, was superseded by Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, set out below.

EX. ORD. NO. 11904. DEFENSE SUPERIOR SERVICE MEDAL

Ex. Ord. No. 11904, Feb. 6, 1976, 41 F.R. 5625, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Superior Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered superior meritorious service in a position of significant responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Superior Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Superior Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal and the Silver Star Medal, but before the Legion of Merit.

SEC. 3. No more than one Defense Superior Service Medal shall be awarded to any one person, but for each succeeding period of superior meritorious service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Superior Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

GERALD R. FORD.

EX. ORD. NO. 11926. VICE PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. There is established a Vice Presidential Service Badge to be awarded in the name of the Vice President of the United States of America to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard who have been assigned to duty in the Office of the Vice President for a period of at least one year subsequent to December 19, 1974.

SEC. 2. The Vice Presidential Service Badge may be awarded, upon recommendation of the Military Assistant to the Vice President, by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation, to military personnel of their respective services who have been assigned to duty in the Office of the Vice President.

SEC. 3. The Vice Presidential Service Badge shall be accompanied by a certificate, the design of which is attached hereto and is made a part of this Order. The Vice Presidential Service Badge shall consist of a white enameled disc surrounded by 27 gold rays radiating from the center, $1\frac{15}{16}$ inches in diameter overall. Superimposed on the white disc shall be a gold color device taken from the seal of the Vice President of the United States. The overall design of the badge shall be as shown at the top of the certificate which accompanies the Badge and which is attached to this Order.

SEC. 4. Upon award, the Vice Presidential Service Badge may be worn as a part of the uniform of an individual both during and after his assignment to duty in the Office of the Vice President.

SEC. 5. Only one Vice Presidential Service Badge shall be awarded to an individual. It may be awarded posthumously.

SEC. 6. Notwithstanding the provisions of Sections 1 and 2 of this Order, any member of the Army, Navy, Air Force, Marine Corps, and Coast Guard, who has been assigned to duty in the Office of the Vice President, is authorized to wear the Vice Presidential Service Badge on his uniform commencing on the first day of duty in the Office of the Vice President and thereafter while assigned to such duty.

SEC. 7. Executive Order No. 11544 of July 8, 1970, is hereby superseded; however, individuals previously awarded a Vice Presidential Service Badge under that Order are authorized to continue to wear such badge as part of their uniform.

GERALD R. FORD.

EX. ORD. NO. 11965. HUMANITARIAN SERVICE MEDAL

Ex. Ord. No. 11965, Jan. 19, 1977, 42 F.R. 4329, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Humanitarian Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense or the Secretary of Transportation with regard to the Coast Guard when not operating as a Service in the Navy. Individuals eligible for the medal are members of the Armed Forces of the United States (including Reserve Components) who, subsequent to April 1, 1975, dis-

tinguished themselves by meritorious participation in a military act or operation of a humanitarian nature. The Secretary of Defense and the Secretary of Transportation for the Coast Guard will determine types of acts or operations that warrant award of the medal.

SEC. 2. The Humanitarian Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Transportation for the Coast Guard under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Humanitarian Service Medal in an order of precedence immediately after the Vietnam Service Medal.

SEC. 3. No more than one Humanitarian Service Medal shall be awarded to any one person, but for each subsequent participation in a humanitarian act or operation justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations of the Military Departments.

SEC. 4. The Humanitarian Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation.

GERALD R. FORD.

EX. ORD. NO. 12019. DEFENSE MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 12019, Nov. 3, 1977, 42 F.R. 57945, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered outstanding non-combat meritorious achievement or service while assigned to the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or other such joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as the Secretary of Defense may prescribe. These regulations shall place the Defense Meritorious Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal, the Silver Star Medal, the Defense Superior Service Medal, the Legion of Merit Medal, and the Bronze Star Medal, but before the Meritorious Service Medal.

SEC. 3. No more than one Defense Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device to be worn with that medal may be awarded under such regulations as the Secretary of Defense may prescribe.

SEC. 4. The Defense Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

JIMMY CARTER.

EX. ORD. NO. 12793. PRESIDENTIAL SERVICE CERTIFICATE AND PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 12793, Mar. 20, 1992, 57 F.R. 10281, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is ordered of follows:

SECTION 1. *Presidential Service Certificate*. The Presidential Service Certificate (''Certificate'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Certificate shall be awarded in the name of the President of the United States by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation. It shall be awarded by the appropriate Secretary to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard, respectively, who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office; or to other direct support positions within the Executive Office of the President (''EOP''). The Certificate shall not be issued to any member who is issued a Vice Presidential Certificate, or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

SEC. 2. *Presidential Service Badge*. The Presidential Service Badge (''Badge'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Badge shall be awarded to those members of the Armed Forces who have been granted the Certificate and shall be awarded in the same manner in which the Certificate has been given. The Badge shall be worn as a part of the uniform of those individuals under such regulations as their respective Secretaries may severally prescribe.

SEC. 3. Only one Certificate may be awarded to an individual.

SEC. 4. The Certificate and the Badge may be granted posthumously.

SEC. 5. This order shall supersede Executive Order No. 10879 of June 1, 1960, as amended.

GEORGE BUSH.

EX. ORD. NO. 12830. MILITARY OUTSTANDING VOLUNTEER SERVICE MEDAL

Ex. Ord. No. 12830, Jan. 9, 1993, 58 F.R. 4061, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Military Outstanding Volunteer Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation. Members of the Armed Forces of the United States (including Reserve components) who perform outstanding volunteer service to the civilian community of a sustained, direct, and consequential nature are eligible for the medal.

SEC. 2. The Military Outstanding Volunteer Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense. The Secretary of Defense shall prescribe regulations to govern the award and wear of the Military Outstanding Volunteer Service Medal. The regulations shall place the Military Outstanding Volunteer Service Medal in order of precedence immediately after the Humanitarian Service Medal.

SEC. 3. No more than one award of the Military Outstanding Volunteer Service Medal may be made to any one person, but for each subsequent act justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations issued by the Secretary of Defense.

SEC. 4. The Military Outstanding Volunteer Service Medal may be awarded posthumously, and when so awarded, may be presented to such representatives of the deceased as may be deemed appropriate by the Secretary of Defense or, in the case of a member of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation.

GEORGE BUSH.

CROSS REFERENCES

Particular provisions relating to—

Air Force, see section 8741 et seq. of this title.
Army, see section 3741 et seq. of this title.
Navy and Marine Corps, see section 6241 et seq. of this title.

§ 1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Legion of Merit'', having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1121	10:1408b(1).	July 20, 1942, ch. 508, § 2(1), 56 Stat. 662.

The words ''Government of the Philippines'' are omitted as covered by the words ''any friendly foreign nation''. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

§ 1122. Medal for Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Medal for Merit'', having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1122	10:1408b (less (1)).	July 20, 1942, ch. 508, § 2 (less (1)), 56 Stat. 663.

The words ''in existence on July 20, 1942'' are inserted for clarity and refer to the war in existence on the date of enactment of the source statute. The words ''as then constituted'' are inserted for clarity, since the United Nations organization in existence on July 20, 1942, was not the present United Nations organization. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

EX. ORD. NO. 9637. MEDAL FOR MERIT

Ex. Ord. No. 9637, Oct. 3, 1945, 10 F.R. 12543, as amended by Ex. Ord. No. 9857A, May 27, 1947, 12 F.R. 3583, provided:

1. The decoration of the Medal for Merit shall be awarded only by the President of the United States or at his direction. Awards of the Medal for Merit may be made to such civilians of the nations prosecuting the war under the joint declaration of the United Nations and of other friendly foreign nations as have distinguished themselves by exceptionally meritorious conduct in the performance of outstanding services since the proclamation of an emergency by the President on September 8, 1939. Awards of the Medal for Merit made to civilians of foreign nations shall be for the performance of an exceptionally meritorious or courageous act or acts in furtherance of the war efforts of the United Nations.

2. There is hereby established the Medal for Merit Board, which shall be composed of three members appointed by the President, one of whom shall be designated by the President to act as Chairman of the Board.

3. The Medal for Merit Board shall receive and consider proposals for the award of the decoration of the Medal for Merit and submit to the President the recommendations of the Board with respect thereto. In the case of proposed awards to civilians of foreign nations, such recommendations shall include the recommendations of the Secretary of State.

4. The Medal for Merit Board is authorized to prescribe, with the approval of the President, such rules and regulations not inconsistent with the provisions of this order as may be necessary to accomplish its purposes.

5. Executive Order 9331 of April 19, 1943 and the Medal for Merit Board created thereby, are superseded by this order.

6. The Medal for Merit shall not be awarded for any services relating to the prosecution of World War II performed subsequent to the cessation of hostilities, as proclaimed by Proclamation No. 2714 of December 31, 1946, and no proposal for an award for such services submitted after June 30, 1947, shall be considered by the Medal for Merit Board.

§ 1123. Right to wear badges of military societies

(a) A member of the Army, Navy, Air Force, or Marine Corps who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chinese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, or Marine Corps who is a member of the Army and Navy Union of the United States may wear, on public occasions of ceremony, the distinctive badges adopted by that society.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1123(a)	10:1427 (1st sentence). 34:371 (1st sentence).	Sept. 25, 1890, J. Res. 50, 26 Stat. 681.
1123(b)	10:1427 (less 1st sentence). 34:371 (less 1st sentence).	May 11, 1894, J. Res. 26, 28 Stat. 583. Feb. 2, 1901, ch. 192, § 41, 31 Stat. 758. Jan. 12, 1903, J. Res. 2, 32 Stat. 1229. Mar. 2, 1907, J. Res. 18, 34 Stat. 1423.

In subsection (a), the words ''an armed force'' are substituted for the words ''armies and navies''. The words ''Revolutionary War'', ''Civil War'', and ''Philippine Insurrection'' are substituted for the words ''War of the Revolution'', ''War of the Rebellion'', and ''incident insurrection in the Philippines'', respectively, to reflect present terminology. The words ''originally composed'' are substituted for the words ''in their own right'', to reflect an opinion of the Attorney General (see 23 Op. Atty. Gen. 454).

In subsections (a) and (b), the word ''member'' is substituted for the words ''officers and enlisted men''. The words ''Navy * * * or Marine Corps'' are substituted for the word ''Navy'', since the word ''Navy'' in the source statute has, by long-standing administrative interpretation, been construed to include the Marine Corps.

In subsection (b), the words ''in their own right'' are omitted as surplusage.

§1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements

(a) The Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned. However, the disclosure, suggestion, invention, or scientific achievement forming the basis for the award must have been made while the member was on active duty or in an active reserve status and not otherwise eligible for an award under chapter 45 of title 5.

(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

(1) an agreement by the member that the use by the United States of any idea, method, or device for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

(f) The total amount of the award, or awards, made under this section for a disclosure, suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(h) For the purposes of this section, a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force.

(Added Pub. L. 89–198, §1(1), Sept. 22, 1965, 79 Stat. 830; amended Pub. L. 89–718, §10, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–623, §2(1), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–470, title I, §112(c), Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96–513, title V, §511(40), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 96–527, title VII, §772, Dec. 15, 1980, 94 Stat. 3093; Pub. L. 99–145, title XII, §1225(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 730.)

CODIFICATION

Another section 1124 was renumbered 1126 of this title.

AMENDMENTS

1985—Pub. L. 99–145 inserted ''disclosures,'' and substituted ''and'' for ''or'' in section catchline, and inserted ''disclosure,'' before ''suggestion'' in subsecs. (a), (b), (c), and (f).

1980—Subsec. (c). Pub. L. 96–527 authorized payment of awards to retired members of the armed forces, required the basis for awards to have been made when in an active reserve status, and required the member to be ineligible for incentive award under chapter 45 of title 5.

Subsec. (g). Pub. L. 96–470 struck out provision requiring the Secretary of Defense and the Secretary of Transportation to annually report to the President, for transmittal to Congress, on progress of the awards program.

Subsec. (h). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1968—Subsecs. (a), (b), (g). Pub. L. 90–623 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1966—Subsec. (g). Pub. L. 89–718 substituted ''progress report'' for ''program report''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1225(a)(3) of Pub. L. 99–145 provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

EX. ORD. NO. 11438. PROCEDURES GOVERNING INTERDEPARTMENTAL CASH AWARDS

Ex. Ord. No. 11438, Dec. 3, 1968, 33 F.R. 18085, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 1124(b) and (e) of title 10, United States Code, and section 301 of title 3, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. Any suggestion, invention, or scientific achievement by a member of the armed forces that contributes to the efficiency, economy, or other improvement of operations of the Government of the United States through its adoption or use by an executive department or agency other than the executive department having jurisdiction over the armed force of the member concerned may be the basis for honorary recognition or a cash award by the Secretary of Transportation in the case of a member of the Coast Guard when it is not operating as a service in the Navy or by the Secretary of Defense in the case of any other member of the armed forces.

SEC. 2. An executive department or agency that adopts or uses the suggestion, invention, or scientific achievement of a member of the armed forces who is not under its jurisdiction may recommend to the Department of Defense or to the Department of Transportation, as appropriate, a cash award or honorary recognition of the member and shall justify its recommendation with appropriate documentation and explanation of how the suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of the operations of the Government of the United States. Awards shall be made under regulations to be prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate. The regulations of the Department of Defense and Department of Transportation may include designations of officials to whom authority for receiving, evaluating, and making awards may be assigned.

SEC. 3. No cash awards hereunder for a single suggestion, invention, or scientific achievement may exceed $25,000 regardless of the number of agencies or departments which may adopt or use the suggestion, invention, or scientific achievement.

SEC. 4. Funds to cover the costs of cash awards to members of the armed forces shall be transferred from the account of any executive department or agency which recommends the award to the appropriate account of the Department of Transportation or the Department of Defense, as the case may be. When several executive departments or agencies benefit from the adoption or use of the suggestion, invention, or scientific achievement, the amount transferred from each such benefiting department or agency to the Department of Transportation or the Department of Defense to cover the proportionate share of the cost of the cash award shall be determined under procedures prescribed by the Office of Personnel Management in accordance with the same guidelines and standards applying to awards to civilian employees.

CROSS REFERENCES

Payment of cash awards by agency heads to employees, see section 4503 of Title 5, Government Organization and Employees.

Presidential cash awards to employees, see section 4504 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 1125. Recognition for accomplishments: award of trophies

The Secretary of Defense may—

(1) award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force under his jurisdiction for excellence in accomplishments or competitions related to that armed force; and

(2) provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable.

(Added Pub. L. 89–529, §1(1), Aug. 11, 1966, 80 Stat. 339.)

EX. ORD. NO. 11545. DEFENSE DISTINGUISHED SERVICE MEDAL

Ex. Ord. 11545, July 9, 1970, 35 F.R. 11161, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Defense Distinguished Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to a military officer who performed exceptionally meritorious service in a duty of great responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Distinguished Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Distinguished Service Medal in an order of precedence after the Medals of Honor and the Distinguished Service Crosses of the Armed Forces and before the Distinguished Service Medals of the Armed Forces.

SEC. 3. No more than one Defense Distinguished Service Medal shall be awarded to any one person, but for each succeeding exceptionally meritorious period of service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Distinguished Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

RICHARD NIXON.

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958—

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of—

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution.

(d) In this section:

(1) The term ''widow'' includes widower.

(2) The term ''parents'' includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term ''next of kin'' includes only children, brothers, sisters, half brothers, and half sisters.

(4) The term ''children'' includes stepchildren and children through adoption.

(5) The term ''World War I'' includes the period from April 6, 1917, to March 3, 1921.

(6) The term ''World War II'' includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term ''military operations'' includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term ''peacekeeping force'' includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(Added Pub. L. 89–534, §1(1), Aug. 11, 1966, 80 Stat. 345, §1124; renumbered §1126, Pub. L. 89–718, §9, Nov. 2, 1966, 80 Stat. 1117; amended Pub. L. 98–94, title XII, §1268(8), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, §7(k)(5), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–160, div. A, title XI, §1143, Nov. 30, 1993, 107 Stat. 1757.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, §1143(a), struck out ''of the United States'' after ''armed forces'' in introductory provisions, redesignated cls. (i) to (iii) of par. (2) as subpars. (A) to (C), respectively, and added par. (3).

Subsec. (d)(7), (8). Pub. L. 103–160, §1143(b), added pars. (7) and (8).

1987—Subsec. (d). Pub. L. 100–26 substituted colon for dash at end of introductory provisions, inserted ''The term'' in each par., and substituted periods for semicolons in pars. (1) to (4) and period for ''; and'' in par. (5).

1983—Subsec. (a)(1). Pub. L. 98–94 substituted ''who'' for ''Who''.

§1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added Pub. L. 98–525, title V, §553(a), Oct. 19, 1984, 98 Stat. 2532; amended Pub. L. 99–145, title V, §533, Nov. 8, 1985, 99 Stat. 634.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''the bronze star'' for ''the lowest position accorded any award or decoration for valor''.

§1128. Prisoner-of-war medal: issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force;

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or

(4) by foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(c) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service, and

(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(d) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(e) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(f) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled,

the medal may be issued to the person's representative, as designated by the Secretary concerned.

(g) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(h) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added Pub. L. 99–145, title V, § 532(a)(1), Nov. 8, 1985, 99 Stat. 633; amended Pub. L. 101–189, div. A, title V, § 516(a), Nov. 29, 1989, 103 Stat. 1441.)

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101–189 added par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 516(b) of Pub. L. 101–189 provided that: ''Paragraph (4) of section 1128(a) of title 10, United States Code, as added by subsection (a), applies with respect to periods of captivity after April 5, 1917.''

EFFECTIVE DATE

Section 532(b) of Pub. L. 99–145 provided that: ''Section 1128 of title 10, United States Code, as added by subsection (a), applies with respect to any person taken prisoner and held captive after April 5, 1917.''

§ 1129. Purple Heart: members killed or wounded in action by friendly fire

(a) For purposes of the award of the Purple Heart, the Secretary concerned shall treat a member of the armed forces described in subsection (b) in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(b) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(c) This section applies to members of the armed forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded as described in subsection (b) on or after December 7, 1941, and before the date of the enactment of this section, the Secretary concerned shall award the Purple Heart under subsection (a) in each case which is known to the Secretary before the date of the enactment of this section or for which an application is made to the Secretary in such manner as the Secretary requires.

(Added Pub. L. 103–160, div. A, title XI, § 1141(a), Nov. 30, 1993, 107 Stat. 1756.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 103–160, which was approved Nov. 30, 1993.

CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED

Sec.
1141. Involuntary separation defined.
1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs.
1143. Employment assistance.
1143a. Encouragement of postseparation public and community service.
1144. Employment assistance, job training assistance, and other transitional services: Department of Labor.
1145. Health benefits.
1146. Commissary and exchange benefits.
1147. Use of military family housing.
1148. Relocation assistance for personnel overseas.
1149. Excess leave and permissive temporary duty.
1150. Affiliation with Guard and Reserve units: waiver of certain limitations.
1151. Assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides.
1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies.
1153. Assistance to separated members to obtain employment with health care providers.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title V, § 542(a)(10), title XI, § 1132(a)(2), Oct. 5, 1994, 108 Stat. 2768, 2873, struck out '': Department of Defense'' after ''assistance'' in item 1143 and after ''service'' in item 1143a and substituted ''eligible members and former members'' for ''separated members'' in item 1152.

1993—Pub. L. 103–160, div. A, title XIII, § 1332(e), Nov. 30, 1993, 107 Stat. 1797, added items 1152 and 1153.

1992—Pub. L. 102–484, div. D, title XLIV, §§ 4441(a)(2), 4462(a)(2), Oct. 23, 1992, 106 Stat. 2730, 2740, added items 1143a and 1151.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1174a, 1175 of this title.

§ 1141. Involuntary separation defined

A member of the armed forces shall be considered to be involuntarily separated for purposes of this chapter if the member was on active duty or full-time National Guard duty on September 30, 1990, or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994, and—

(1) in the case of a regular officer (other than a retired officer), the officer is involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned;

(2) in the case of a reserve officer who is on the active-duty list or, if not on the active-duty list, is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the officer is involuntarily discharged or released from active duty or full-time National Guard (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions, as characterized by the Secretary concerned;

(3) in the case of a regular enlisted member serving on active duty, the member is (A) denied reenlistment, or (B) involuntarily discharged under other than adverse conditions,

as characterized by the Secretary concerned; and

(4) in the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the member (A) is denied reenlistment, or (B) is involuntarily discharged or released from active duty (or full-time National Guard) under other than adverse conditions, as characterized by the Secretary concerned.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1551; amended Pub. L. 103–160, div. A, title V, §503, Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, §542(a)(1), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Pub. L. 103–337, in introductory provisions, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' and ''or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994,'' for ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994''.

1993—Pub. L. 103–160 inserted ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994'' after ''September 30, 1990,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 542(e) of Pub. L. 103–337 provided that: ''This section [amending this section and sections 1143, 1143a, 1145 to 1150, 1174a, and 1175 of this title and enacting provisions set out as a note under section 1293 of this title] and the amendments made by this section shall apply only to members of the Coast Guard who are separated after September 30, 1994.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174a, 1175 of this title; title 20 section 932; title 29 section 1662d–1; title 37 sections 404, 406; title 38 section 3018A.

§1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs

(a) REQUIREMENT.—(1) As soon as possible before, but in no event later than 90 days before, the date of the discharge or release from active duty of a member of the armed forces, the Secretary concerned shall provide for individual preseparation counseling of the member. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned may use the services available under section 1144 of this title.

(b) MATTERS TO BE COVERED BY COUNSELING.—Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Information concerning Government and private-sector programs for job search and job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement programs established under sections 1151, 1152, and 1153 of this title.

(5) If the member has a spouse, job placement counseling for the spouse.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individuals and their families.

(9) Financial planning assistance.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, and employment objectives of the member and, if the member has a spouse, the spouse of the member.

(c) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.—In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the member's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1552; amended Pub. L. 102–190, div. A, title X, §1061(a)(5), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§4401, 4441(b), 4462(b), Oct. 23, 1992, 106 Stat. 2701, 2730, 2740; Pub. L. 103–35, title II, §201(i)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §1332(c), Nov. 30, 1993, 107 Stat. 1797.)

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''programs established under sections 1151, 1152, and 1153 of this title'' for ''program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides''.

Pub. L. 103–35 substituted ''job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides'' for ''job placement assistance and information regarding the placement

program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides., including the public and community service jobs program carried out under section 1143a of this title''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 4401(a), substituted ''As soon as possible before, but in no event later than 90 days before, the date of the discharge'' for ''Upon the discharge''.

Subsec. (b)(4). Pub. L. 102–484, § 4462(b), inserted before period at end '', including the public and community service jobs program carried out under section 1143a of this title''.

Pub. L. 102–484, § 4441(b), inserted before period at end ''and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides.''

Subsec. (b)(10). Pub. L. 102–484, § 4401(b), added par. (10).

1991—Subsec. (b)(5). Pub. L. 102–190 substituted period for semicolon at end.

APPLICATION OF PRESEPARATION COUNSELING REQUIREMENTS TO COAST GUARD

Pub. L. 103–337, div. A, title V, § 543(a), Oct. 5, 1994, 108 Stat. 2769, provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of section 1142 of title 10, United States Code, for the Coast Guard.''

LIMITATION ON FUNDING TO CARRY OUT SECTION 543 OF PUB. L. 103–337

Pub. L. 103–337, div. A, title V, § 543(h), Oct. 5, 1994, 108 Stat. 2772, provided that: ''Funds appropriated or otherwise made available to the Department of Defense, the Department of Education, the Department of Labor, or the Department of Veterans Affairs may not be used to carry out subsection (a) [set out above] or the amendments made by this section [amending sections 1144 and 1151 to 1153 of this title and provisions set out as notes under section 1143 of this title].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078a, 1144, 1151 of this title.

§ 1143. Employment assistance

(a) EMPLOYMENT SKILLS VERIFICATION.—The Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard shall provide to members of the armed forces who are discharged or released from active duty a certification or verification of any job skills and experience acquired while on active duty that may have application to employment in the civilian sector. The preceding sentence shall be carried out in conjunction with the Secretary of Labor.

(b) EMPLOYMENT ASSISTANCE CENTERS.—The Secretary of Defense shall establish permanent employment assistance centers at appropriate military installations. The Secretary of Transportation shall establish permanent employment assistance centers at appropriate Coast Guard installations.

(c) INFORMATION TO CIVILIAN ENTITIES.—For the purpose of assisting members covered by subsection (a) and their spouses in locating civilian employment and training opportunities, the Secretary of Defense and the Secretary of Transportation shall establish and implement procedures to release to civilian employers, organizations, State employment agencies, and other appropriate entities the names (and other pertinent information) of such members and their spouses. Such names may be released for such purpose only with the consent of such members and spouses.

(d) EMPLOYMENT PREFERENCE BY NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense shall take such steps as necessary to provide that members of Army, Navy, Air Force, or Marine Corps who are involuntarily separated, and the dependents of such members, shall be provided a preference in hiring by nonappropriated fund instrumentalities of the Department. Such preference shall be administered in the same manner as the preference for military spouses provided under section 806(a)(2) of the Military Family Act of 1985, except that a preference under that section shall have priority over a preference under this subsection. A person may receive a preference in hiring under this subsection only once. The Secretary of Transportation shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 103–337, div. A, title V, § 542(a)(2), Oct. 5, 1994, 108 Stat. 2767.)

REFERENCES IN TEXT

Section 806(a)(2) of the Military Family Act of 1985 [Pub. L. 99–145], referred to in subsec. (d), is set out in a note under section 113 of this title.

AMENDMENTS

1994—Pub. L. 103–337, § 542(a)(2)(A), struck out '': Department of Defense'' after ''assistance'' in section catchline.

Subsec. (a). Pub. L. 103–337, § 542(a)(2)(B), inserted ''and the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''under the jurisdiction of the Secretary'' after ''armed forces''.

Subsec. (b). Pub. L. 103–337, § 542(a)(2)(C), inserted at end ''The Secretary of Transportation shall establish permanent employment assistance centers at appropriate Coast Guard installations.''

Subsec. (c). Pub. L. 103–337, § 542(a)(2)(D), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, § 542(a)(2)(E), inserted at end ''The Secretary of Transportation shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

DEMONSTRATION PROGRAM FOR TRAINING RECENTLY DISCHARGED VETERANS FOR EMPLOYMENT IN CONSTRUCTION AND HAZARDOUS WASTE REMEDIATION

Pub. L. 103–160, div. A, title XIII, § 1337, Nov. 30, 1993, 107 Stat. 1805, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense may establish a demonstration program to promote the training and employment of veterans in the construction and hazardous waste remediation industries. Using funds made available to carry out this section the Sec-

retary shall make grants under the demonstration program to organizations that meet the eligibility criteria specified in subsection (b).

''(b) GRANT ELIGIBILITY CRITERIA.—An organization is eligible to receive a grant from the Secretary under subsection (a) if it—

''(1) demonstrates, to the satisfaction of the Secretary, an ability to recruit and counsel veterans for participation in the demonstration program under this section;

''(2) has entered into an agreement with a joint labor-management training fund established consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)) to implement and operate a training and employment program for veterans;

''(3) agrees under the agreement referred to in paragraph (2) to use grant funds to carry out a program that will provide eligible veterans with training for employment in the construction and hazardous waste remediation industries;

''(4) provides such training for an eligible veteran for not more than 18 months;

''(5) demonstrates actual experience in providing training for veterans under an agreement referred to in paragraph (2);

''(6) agrees to make, along with all subgrantees, a substantial in-kind contribution (as determined by the Secretary of Defense) from non-Federal sources to the demonstration program under this section; and

''(7) gives its assurances, to the satisfaction of the Secretary, that full time, permanent jobs will be available for individuals successfully completing the training program, with a special emphasis on jobs with employers in construction and hazardous waste remediation on Department of Defense facilities.

''(c) ELIGIBLE VETERANS.—An individual is an eligible veteran for the purposes of this section if the individual—

''(1)(A) served in the active military, naval, or air service for a period of at least two years;

''(B) was discharged or released from active duty because of a service-connected disability; or

''(C) is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more; and

''(2) was discharged or released on or after August 2, 1990, under conditions other than dishonorable.

''(d) PREFERENCE.—In carrying out the demonstration program under this section, the Secretary shall ensure that a preference is given to eligible veterans who had a primary or secondary occupational specialty in the Armed Forces that (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) is not readily transferable to the civilian work force.

''(e) HAZARDOUS WASTE OPERATIONS TRAINING GOAL.—It is the sense of Congress that at least 20 percent of the total number of veterans completing training under the demonstration program under this section should complete the training required—

''(1) for certification under section 126 of the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499] (29 U.S.C. 655 note); and

''(2) under any other Federal law which requires certification for employees engaged in hazardous waste remediation operations.

''(f) USE OF FUNDS.—Funds made available to carry out this section may only be used for tuition and stipends to cover the living and travel expenses of participants, except that the Secretary may provide that not more than a total of four percent of all the funds made available under this section may be used for administrative expenses of grantees and subgrantees.

''(g) LIMITATION ON TUITION CHARGED.—The amount of tuition charged eligible veterans participating in a training program funded under the demonstration program may not exceed the amount of tuition charged to nonveterans participating in programs substantially similar to that training program.

''(h) LIMITATION ON EXPENDITURES PER PARTICIPANT.—Of the funds made available to carry out this section—

''(1) not more than $1,000 may be expended with respect to each veteran participating in the construction phase of the demonstration program; and

''(2) not more than an additional $1,000 may be expended with respect to each veteran participating in the hazardous waste remediation phase of the demonstration program, except that the Secretary may authorize an additional $300 for the training of a veteran participating in such phase if the Secretary determines that such additional amount is necessary because of the type of training needed for the particular kind of hazardous waste remediation involved.

''(i) REPORTS.—(1) Not later than November 1, 1994, the Secretary shall submit to Congress an interim report describing the manner in which the demonstration program under this section is being carried out, including a detailed description of the number of grants made, the number of veterans involved, the kinds of training received, and any job placements that have occurred or that are anticipated.

''(2) Not later than December 31, 1995, the Secretary shall submit to Congress a final report containing a description of the results of the demonstration program with a detailed description of the number of grants made, the number of veterans involved, the number of veterans who completed the program, the number of veterans who were placed in jobs, the number of veterans who failed to complete the program along with the reasons for such failure, and any recommendations the Secretary considers to be appropriate.

''(j) DEFINITIONS.—For purposes of this section, the terms 'veteran', 'service-connected', 'active duty', and 'active military, naval, or air service' have the meanings given such terms in paragraphs (2), (16), (21), and (24), respectively, of section 101 of title 38, United States Code.

''(k) TERMINATION.—Not later than October 1, 1994, the Secretary shall obligate, in accordance with the provisions of this section, the funds made available to carry out the demonstration program under this section.''

IMPROVED COORDINATION OF JOB TRAINING AND PLACEMENT PROGRAMS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. D, title XLIV, §4461, Oct. 23, 1992, 106 Stat. 2738, provided that: ''The Secretary of Defense shall consult with the Secretary of Labor, the Secretary of Education, the Secretary of Veterans Affairs, and the Economic Adjustment Committee to improve the coordination of, and eliminate duplication between, the following job training and placement programs available to members of the Armed Forces who are discharged or released from active duty:

''(1) The Job Training Partnership Act (29 U.S.C. 1501 et seq.).

''(2) Sections 1143 and 1144 of title 10, United States Code.

''(3) Chapter 41 of title 38, United States Code.

''(4) The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

''(5) The Act of August 16, 1937 (Chapter 663; 50 Stat 664; 29 U.S.C. 50 et seq.), commonly known as the National Apprenticeship Act.

''(6) The Wagner-Peyser Act (29 U.S.C. 49 et seq.)[.]''

PARTICIPATION OF DISCHARGED MILITARY PERSONNEL IN UPWARD BOUND PROJECTS TO PREPARE FOR COLLEGE

Pub. L. 102–484, div. D, title XLIV, §4466, Oct. 23, 1992, 106 Stat. 2748, as amended by Pub. L. 103–337, div. A, title V, §543(f), Oct. 5, 1994, 108 Stat. 2771, provided that:

''(a) PROGRAM.—The Secretary of Defense may carry out a program to assist a member of the Armed Forces described in subsection (b) who is accepted to participate in an upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to cover the cost of providing services through the project to the member to assist the member to pre-

pare for and pursue a program of higher education upon separation from active duty. Assistance provided under the program may include a stipend provided under subsection (d) of such section.

''(b) ELIGIBLE MEMBERS.—A member of the Armed Forces shall be eligible for assistance under subsection (a) if the member—

''(1) was on active duty or full-time National Guard duty on September 30, 1990;

''(2) during the five-year period beginning on that date, was or is discharged or released from such duty (under other than adverse circumstances); and

''(3) submits an application to the Secretary of Defense within such time, in such form, and containing such information as the Secretary of Defense may require.

''(c) NOTIFICATION OF MEMBERS PREVIOUSLY SEPARATED.—To the extent feasible, the Secretary of Defense shall notify members of the Armed Forces who, between September 30, 1990, and the date of the enactment of this Act [Oct. 23, 1992], were discharged or released from active duty or full-time National Guard duty regarding the availability of the program under subsection (a). The Secretary may establish a time limit within which such members may apply to participate in the program.

''(d) PROVISION OF ASSISTANCE.—

''(1) DETERMINATION OF AMOUNT.—The amount of assistance provided under subsection (a) to a member of the Armed Forces shall be equal to the anticipated cost of providing services to the member through an upward bound project, subject to the limitation that such amount may not exceed the monthly basic pay to which the member is entitled at the time of the separation of the member. The Secretary of Defense may provide assistance in excess of that limitation if the Secretary determines, on a case by case basis, that such assistance is warranted by the special training needs of the member.

''(2) CONSULTATION.—The Secretary of Education may assist the Secretary of Defense in determining the amount to be provided under paragraph (1).

''(e) USE OF ASSISTANCE.—A member of the Armed Forces who is selected to participate in the program may receive services through any upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to the same extent as other individuals eligible to receive such services. A member may not participate after the end of the two-year period beginning on the date on which the member is discharged or released from active duty, except that, in the case of a member described in subsection (b) who was discharged or released from active duty before the date of the enactment of this Act [Oct. 23, 1993], the period for participation in the program shall be two years from the date of the enactment of this Act.

''(f) REIMBURSEMENT.—Upon submission to the Secretary of Defense of a request for reimbursement of the costs to provide services to a participant, the Secretary shall reimburse the upward bound project submitting the request for the actual cost of providing services (including a stipend) to the member, not to exceed the amount provided under subsection (d)(1). Funds provided under this subsection shall be in addition to the funds otherwise provided to the project under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.). Not more than 10 percent of the funds provided under this subsection may be used for administrative costs.

''(g) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $5,000,000 shall be available to provide assistance under this section.

''(h) APPLICATION TO COAST GUARD.—The Secretary of Transportation may implement the provisions of this section for the Coast Guard in the same manner and to the same extent as such section applies to the Department of Defense.''

SERVICE MEMBERS OCCUPATIONAL CONVERSION AND TRAINING

Section 543(g)(2) of Pub. L. 103–337 provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of the Service Members Occupational Conversion and Training Act of 1992 (subtitle G of title XLIV of Public Law 102–484; 10 U.S.C. 1143 note) for the Coast Guard.''

Pub. L. 102–484, div. D, title XLIV, subtitle G, Oct. 23, 1992, 106 Stat. 2757, as amended by Pub. L. 103–160, div. A, title XIII, § 1338, Nov. 30, 1993, 107 Stat. 1807; Pub. L. 103–337, div. A, title V, § 543(g)(1), Oct. 5, 1994, 108 Stat. 2772; Pub. L. 103–446, title VI, § 610(a)(1), (2)(A), (b), (c), Nov. 2, 1994, 108 Stat. 4673, provided that:

''SEC. 4481. SHORT TITLE.

''This subtitle [subtitle G (§§ 4481–4497) of title XLIV of Pub. L. 102–484] may be cited as the 'Service Members Occupational Conversion and Training Act of 1992'.

''SEC. 4482. FINDINGS AND PURPOSES.

''(a) FINDINGS.—The Congress finds that—

''(1) the men and women serving in our Nation's Armed Forces are of the highest caliber—intelligent, dedicated, and disciplined—and hundreds of thousands of these service members will be separating from the Armed Forces due to the drawdown in military personnel;

''(2) these men and women will be entering the civilian workforce during a time of economic instability and uncertainty;

''(3) many of these service personnel specialized in critical skills such as combat arms which will not transfer to the civilian workforce;

''(4) as part of the Nation's obligation to these service members, the Secretary of Defense has a unique responsibility and obligation to provide them with the tools they need to be reassimilated into the civilian community and continue to be outstanding, productive citizens;

''(5) the rapid placement of separated military personnel in civilian employment and training opportunities will significantly reduce the Department of Defense's costs relative to unemployment compensation for ex-service members;

''(6) military personnel are a national resource whose skills and abilities must be absorbed by and integrated into the civilian workforce; and

''(7) providing such training will reduce the total cost of the drawdown and is important to the national defense function of the Department of Defense.

''(b) PURPOSE.—The purpose of this subtitle is to provide additional means by which the Secretary of Defense can manage the drawdown of the Armed Forces and to provide additional forms of assistance to members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces, thereby facilitating the Secretary's ability to achieve end strength reductions caused by the drawdown.

''SEC. 4483. DEFINITIONS.

''For the purposes of this subtitle:

''(1) The term 'Secretary' means the Secretary of Defense with respect to the Department of Defense and the Secretary of Transportation with respect to the Coast Guard.

''(2) The terms 'veteran', 'compensation', 'service-connected', 'State', and 'active military, naval, or air service' have the meanings given such terms in paragraphs (2), (13), (16), (20), and (24), respectively, of section 101 of title 38, United States Code.

''SEC. 4484. ESTABLISHMENT OF PROGRAM.

''(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary shall carry out a program in accordance with this subtitle to assist eligible persons in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. The Secretary may enter into an agreement with the Secretary of Veterans Affairs, the Secretary of Labor, or both, for the implementation of the program. The program shall be carried out through pay-

ments to employers who employ and train eligible persons in such positions. Such payments shall be made to assist such employers in defraying the costs of necessary training.

''(b) STATE AGENCIES.—(1) The implementing official may enter into contracts or agreements with State approving agencies, as designated pursuant to section 3671(a) of title 38, United States Code, or other State agencies to carry out any duty of the implementing official under this subtitle. Payment may be made to such agencies pursuant to any such contract or agreement for reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out such duties. Each such payment may be made only from funds available to the implementing official pursuant to section 4495(a)(3).

''(2) Each State approving agency or other State agency with which a contract or agreement is entered into under this section shall submit to the implementing official on a monthly or quarterly basis, as determined by the agency, a report containing a certification of such expenses for the period covered by the report. The report shall be submitted in the form and manner required by such official.

''(c) EXPEDITIOUS IMPLEMENTATION.—A requirement in this subtitle to issue regulations shall not be the basis for a delay in carrying out this program within the time limit established by subsection (a).

''SEC. 4485. ELIGIBILITY FOR PROGRAM; PERIOD OF TRAINING.

''(a) IN GENERAL.—(1) To be eligible for participation in a program of job training under this subtitle, an eligible person must be an eligible person described in paragraph (2) who—

''(A)(i) is unemployed at the time of applying for participation in a program under this subtitle; and

''(ii) has been unemployed for at least 8 of the 15 weeks immediately preceding the date of such eligible person's application for participation in a program under this subtitle;

''(B) separates from the active military, naval, or air service and whose primary or secondary occupational specialty in the Armed Forces is (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) not readily transferable to the civilian workforce; or

''(C) served in the active military, naval, or air service and is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more.

''(2) For purposes of paragraph (1), an eligible person referred to in paragraph (1) is a veteran who—

''(A) was discharged on or after August 2, 1990; and

''(B)(i) served in the active military, naval, or air service for a period of more than 90 days; or

''(ii) was discharged or released from active duty because of a service-connected disability.

''(3) For purposes of paragraph (1), an eligible person shall be considered to be unemployed during any period such person is without a job and wants and is available for work. In determining whether a person is unemployed for purposes of paragraph (1), the implementing official shall not take into consideration part-time or temporary employment, as defined by such official.

''(b) APPLICATION PROCESS.—(1) An eligible person who desires to participate in a program of job training under this subtitle shall submit to the implementing official an application for participation in such a program. Such an application—

''(A) shall include a certification by the eligible person that the eligible person meets the criteria for eligibility prescribed by subparagraph (A), (B), or (C) of subsection (a)(1);

''(B) shall include an opportunity for the eligible person to request counseling under section 4493(a); and

''(C) shall be in such form and contain such additional information as such official may prescribe.

''(2)(A) Subject to subparagraph (B), an application by an eligible person for participation in a program of job training under this subtitle shall be approved unless the implementing official finds that the eligible person is not eligible to participate in a program of job training under this subtitle.

''(B) Approval of an application of an eligible person under this subtitle may be withheld if the implementing official determines that, because of limited funds available for the purpose of making payments to employers under this subtitle, it is necessary to limit the number of participants in the program carried out under this subtitle.

''(3)(A) Subject to section 4491(c), the implementing official shall certify as eligible for participation under this subtitle an eligible person whose application is approved under this subsection and shall furnish the eligible person with a certificate of that eligible person's eligibility for presentation to an employer offering a program of job training under this subtitle. Any such certificate shall expire 180 days after it is furnished to the eligible person. The date on which a certificate is furnished to an eligible person under this paragraph shall be stated on the certificate.

''(B) A certificate furnished under this paragraph may, upon the eligible person's application, be renewed in accordance with the terms and conditions of subparagraph (A).

''(c) APPEAL OF DENIAL OF CERTIFICATE.—The implementing official shall permit each eligible person who is not issued a certificate of eligibility under subsection (b) (other than an eligible person who is not issued such a certificate by reason of subsection (b)(2)(B)) to challenge in a hearing before the implementing official the decision of the implementing official not to issue the certificate. The implementing official shall prescribe procedures with respect to the initiation and conduct of hearings under this subsection.

''(d) PERIOD OF TRAINING.—An employer shall provide a period of training under a program of job training under this subtitle of not less than 6 months in a field of employment providing a reasonable probability of stable, long-term employment.

''SEC. 4486. APPROVAL OF EMPLOYER PROGRAMS.

''(a) IN GENERAL.—(1) An employer may be paid assistance under section 4487(a) on behalf of an eligible person employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section.

''(2) Except as provided in subsection (b), a proposed program of job training of an employer shall be approved unless the implementing official determines that the application does not contain a certification and other information meeting the requirements established under this subtitle or that withholding of approval is warranted under subsection (g).

''(b) INELIGIBLE PROGRAMS.—A program of job training—

''(1) for employment which consists of seasonal, intermittent, or temporary jobs;

''(2) for employment under which commissions are the primary source of income;

''(3) for employment which involves political or religious activities;

''(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

''(5) for employment outside of a State,

may not be approved under this subtitle.

''(c) APPLICATION.—An employer offering a program of job training that the employer desires to have approved for the purposes of this subtitle shall submit to the implementing official a written application for such approval. Such application shall be in such form as such official shall prescribe.

''(d) CERTIFICATION.—An application under subsection (c) shall include a certification by the employer of the following:

''(1) That the employer is planning that, upon an eligible person's completion of the program of job training, the employer will employ the eligible person in a position for which the eligible person has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the eligible person at the end of the training period.

''(2) That the wages and benefits to be paid to an eligible person participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in the same or a comparable program of job training in the community for the entire period of training of the eligible person.

''(3) That the employment of an eligible person under the program—

''(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

''(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring an eligible person in such job under this subtitle.

''(4) That the employer will not employ in the program of job training an eligible person who is already qualified by training and experience for the job for which training is to be provided.

''(5) That the job which is the objective of the training program is one that involves significant training.

''(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under paragraph (2) of subsection (e).

''(7) That each participating eligible person will be employed full time in the program of job training.

''(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

''(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as are needed to accomplish the training objective certified under subsection (e)(2).

''(10) That the employer will keep records adequate to show the progress made by each eligible person participating in the program and otherwise to demonstrate compliance with the requirements established under this subtitle.

''(11) That the employer will furnish each participating eligible person, before the eligible person's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the eligible person's signed acknowledgment of having received such certification.

''(12) That, as applicable, the employer will provide each participating eligible person with the full opportunity to participate in a personal interview pursuant to section 4493(b)(1)(B) during the eligible person's normal workday.

''(13) That the program meets such other criteria as the Secretary, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, may determine are essential for the effective implementation of the program established by this subtitle.

''(e) HOURS AND TRAINING CONTENT.—A certification under subsection (d) shall include—

''(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered an eligible person, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

''(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 4489) and of the objective of the training.

''(f) STATUS OF CERTIFIED MATTERS.—(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this subtitle.

''(2)(A) For the purposes of section 4487(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

''(B) For the purposes of section 4490, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

''(g) WITHHOLDING APPROVAL; DISAPPROVAL.—In accordance with regulations which the Secretary shall prescribe, the implementing official may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 4491 and, based on the outcome of such an investigation, may disapprove such program.

''(h) ON-JOB TRAINING.—For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 3687 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this subtitle (other than subsection (b) and (d)(3)) for approval of a program of job training.

''SEC. 4487. PAYMENTS TO EMPLOYERS; OVERPAYMENT.

''(a) PAYMENTS.—(1)(A) Except as provided in subsections (b) and (c) and subject to section 4485(d), the implementing official shall make payments to employers in accordance with this section. The amount payable to such an employer on behalf of an eligible person with respect to an approved program of job training under this subtitle shall be determined by such official at the beginning of such program. Except as provided in subparagraphs (B) and (C), that amount shall be equal to 50 percent of the product of (i) the starting hourly rate of wages paid to the eligible person by the employer (without regard to overtime or premium pay), and (ii) the number of hours to be worked by the eligible person during the entire program period but in no event to exceed hours equivalent to 18 months of training.

''(B) In no case may the amount determined under subparagraph (A) exceed—

''(i) $12,000 for an eligible person with a service-connected disability rated at 30 percent or more; or

''(ii) $10,000 for an eligible person not described in clause (i).

''(C) Assistance may be paid under this subtitle on behalf of an eligible person to that person's employer for training under two or more programs of job training under this subtitle if such employer has not received (or is not due) on that person's behalf assistance in an amount aggregating the applicable amount set forth in subparagraph (B).

''(b) PAYMENT PERIOD.—(1) Except as provided in paragraphs (2) and (3), the implementing official shall pay training assistance to employers under this section on a quarterly basis.

''(2) The implementing official may pay training assistance to an employer on a monthly basis if the implementing official determines (pursuant to regulations prescribed by the implementing official) that the number of employees of the employer is such that the payment of assistance on a quarterly basis would be burdensome to the employer.

''(3) The implementing official shall withhold 25 percent of each payment due under this subsection with respect to an eligible person. The total amount withheld with respect to an eligible person under this paragraph shall be paid to the employer at the end of the

four month period of employment of such person under this subtitle beginning on the date of completion of training, or upon the completion of the 18th month of training under the last training program approved for the person's pursuit with that employer under this subtitle, whichever is earlier.

''(c) TOOLS AND OTHER WORK-RELATED MATERIALS.—In addition to payments under subsection (a), the implementing official shall reimburse the employer for the cost of tools and other work-related materials necessary for the eligible person's participation in the program of job training in an amount up to $500 if the employer presents to the implementing official a certification signed by the employer and eligible person that—

''(1) tools and other work-related materials are necessary for the eligible person's participation in the job training program,

''(2) the eligible person bought the tools and other work-related materials, and

''(3) the employer paid the eligible person for the cost of the tools and other work-related materials.

''(d) OVERPAYMENTS.—(1)(A) Whenever the implementing official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

''(B) Whenever such official finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this subtitle (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered to be an overpayment under this subtitle, and the amount of such overpayment shall constitute a liability of the employer to the United States.

''(2) Whenever such official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification by the eligible person, or as a result of information provided to an employer or contained in an application submitted by the eligible person, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the eligible person to the United States.

''(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this subtitle. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

''(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 5302 of title 38, United States Code.

''(e) LIMITATIONS.—(1) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person until the implementing official has received—

''(A) from the eligible person, a certification that the eligible person was employed full time by the employer in a program of job training during such period; and

''(B) from the employer, a certification—

''(i) that the eligible person was employed by the employer during that period and that the eligible person's performance and progress during such period were satisfactory; and

''(ii) of the number of hours worked by the eligible person during that period.

With respect to the first such certification by an employer with respect to an eligible person, the certification shall indicate the date on which the employment of the eligible person began and the starting hourly rate of wages paid to the eligible person (without regard to overtime or premium pay).

''(2) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person for which a request for payment is made after two years after the date on which that period of training ends.

''SEC. 4488. ENTRY INTO PROGRAM OF JOB TRAINING.

''(a) IN GENERAL.—Notwithstanding any other provision of this subtitle, the implementing official shall withhold or deny approval of an eligible person's entry into an approved program of job training if such official determines that funds are not available to make payments under this subtitle on behalf of the eligible person to the employer offering that program. Before the entry of an eligible person into an approved program of job training of an employer for purposes of assistance under this subtitle, the employer shall notify such official of the employer's intention to employ that eligible person. The eligible person may begin such program of job training with the employer on the day that notice is transmitted to such official by means prescribed by such official. However, assistance under this subtitle may not be provided to the employer if such official, within two weeks after the date on which such notice is transmitted, disapproves the eligible person's entry into that program of job training in accordance with this section.

''(b) PERIOD FOR COMMENCEMENT OF PARTICIPATION UNDER CERTIFICATE.—An eligible person who is issued a certificate of eligibility for participation in a program of job training under this subtitle shall commence participation in such a program not more than 180 days after the date of the issuance of the certificate. The date on which a certificate is furnished to an eligible person shall be stated on the certificate.

''SEC. 4489. PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS.

''An employer may enter into an agreement with an educational institution that has been approved for the purposes of chapter 106 of title 10, United States Code, or any other institution offering a program of job training, as approved by the Secretary of Veterans Affairs, in order that such institution may provide a program of job training (or a portion of such a program) under this subtitle. When such an agreement has been entered into, the application of the employer under section 4486 shall so state and shall include a description of the training to be provided under the agreement.

''SEC. 4490. DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS.

''(a) FAILURE TO MEET REQUIREMENTS.—If the implementing official finds at any time that a program of job training previously approved for the purposes of this subtitle thereafter fails to meet any of the requirements established under this subtitle, such official may immediately disapprove further participation by eligible persons in that program. Such official shall provide to the employer concerned, and to each eligible person participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such eligible person shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

''(b) RATE OF COMPLETION.—(1) If the implementing official determines that the rate of eligible persons' successful completion of an employer's programs of job training previously approved for the purposes of this subtitle is disproportionately low because of deficiencies in the quality of such programs, such official shall disapprove participation in such programs on the part of eligible persons who had not begun such participation on the date that the employer is notified of the disapproval. In determining whether any such rate is disproportionately low because of such deficiencies,

such official shall take into account appropriate data, including—

''(A) the quarterly data provided by the Secretary of Labor with respect to the number of eligible persons who receive counseling in connection with training under this subtitle, are referred to employers under this subtitle, participate in job training under this subtitle, and complete such training or do not complete such training, and the reasons for noncompletion; and

''(B) data compiled through the particular employer's compliance surveys.

''(2) With respect to a disapproval under paragraph (1), the implementing official shall provide to the employer concerned the kind of statement, opportunity for hearing, and notice described in subsection (a).

''(3) A disapproval under paragraph (1) shall remain in effect until such time as the implementing official determines that adequate remedial action has been taken.

''SEC. 4491. INSPECTION OF RECORDS; INVESTIGATIONS.

''(a) RECORDS.—The records and accounts of employers pertaining to eligible persons on behalf of whom assistance has been paid under this subtitle, as well as other records that the implementing official determines to be necessary to ascertain compliance with the requirements established under this subtitle, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

''(b) COMPLIANCE MONITORING.—Such official may monitor employers and eligible persons participating in programs of job training under this subtitle to determine compliance with the requirements established under this subtitle.

''(c) INVESTIGATIONS.—Such official may investigate any matter such official considers necessary to determine compliance with the requirements established under this subtitle. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this subtitle, or where any of the records of the employer offering or providing such program are kept.

''(d) DEPARTMENT OF LABOR.—Functions may be administered under subsections (b) and (c) in accordance with an agreement between the Secretary and the Secretary of Labor providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections.

''SEC. 4492. COORDINATION WITH OTHER PROGRAMS.

''(a) VETERANS EDUCATION PROGRAMS.—(1) Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period of time described in paragraph (2) and to such eligible person under chapter 30, 31, 32, 35, or 36 of title 38, United States Code, or chapter 106 of title 10, United States Code, for the same period of time.

''(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the eligible person enters into an approved program of job training of an employer for purposes of assistance under this subtitle and ending on the last date for which such assistance is payable.

''(b) OTHER TRAINING AND EMPLOYMENT.—Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period if the employer receives for that period any other form of assistance on account of the training or employment of the eligible person, including assistance under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] or a credit under section 51 of the Internal Revenue Code of 1986 [26 U.S.C. 51] (relating to credit for employment of certain new employees).

''(c) PREVIOUS COMPLETION OF PROGRAM.—Assistance may not be paid under this subtitle on behalf of an eligible person who has completed a program of job training under this subtitle.

''(d) PROMOTION.—(1) In carrying out section 3116(b) of title 38, United States Code, the Secretary of Veterans Affairs shall take all feasible steps to establish and encourage, for eligible persons who are eligible to have payments made on their behalf under such section, the development of training opportunities through programs of job training under this subtitle.

''(2) The Secretary of Veterans Affairs, in cooperation with the implementing official (unless the Secretary of Veterans Affairs is the implementing official), shall take all feasible steps to ensure that, in the cases of eligible persons who are eligible to have payments made on their behalf under both this subtitle and section 3116(b) of title 38, United States Code, the authority under such section is utilized, to the maximum extent feasible and consistent with the eligible person's best interests, to make payments to employers on behalf of such eligible persons.

''SEC. 4493. COUNSELING.

''(a) IN GENERAL.—The implementing official shall, upon request, provide, by contract or otherwise, employment counseling services to any eligible person eligible to participate under this subtitle in order to assist such eligible person in selecting a suitable program of job training under this subtitle.

''(b) CASE MANAGER.—(1) The implementing official shall provide for a program under which—

''(A) except as provided in paragraph (2), a disabled veteran's outreach program specialist appointed under section 4103A(a) of title 38, United States Code, is assigned as a case manager for each eligible person participating in a program of job training under this subtitle;

''(B) the eligible person has an in-person interview with the case manager not later than 60 days after entering into a program of training under this subtitle; and

''(C) periodic (not less frequent than monthly) contact is maintained with each such eligible person for the purpose of (i) avoiding unnecessary termination of employment, (ii) referring the eligible person to appropriate counseling, if necessary, (iii) facilitating the eligible person's successful completion of such program, and (iv) following up with the employer and the eligible person in order to determine the eligible person's progress in the program and the outcome regarding the eligible person's participation in and successful completion of the program.

''(2) No case manager shall be assigned pursuant to paragraph (1)(A)—

''(A) for an eligible person if, on the basis of a recommendation made by a disabled veterans' outreach program specialist, the implementing official determines that there is no need for a case manager for such eligible person; or

''(B) in the case of the employees of an employer, if the implementing official determines that—

''(i) the employer has an appropriate and effective employee assistance program that is available to all eligible persons participating in the employer's programs of job training under this subtitle; or

''(ii) the rate of eligible persons' successful completion of the employer's programs of job training under this subtitle, either cumulatively or during the previous program year, is 60 percent or higher.

''(3) The implementing official shall provide, to the extent feasible, a program of counseling or other services designed to resolve difficulties that may be encountered by eligible persons during their training under this subtitle. Such counseling or other services shall be similar to the counseling and other services provided under sections 1712A, 3697A, 4103A, 4104, 7723, and 7724 of title 38, United States Code, and section 1144 of title 10, United States Code.

''(c) CASE MANAGER REQUIRED.—Before an eligible person who voluntarily terminates from a program of

job training under this subtitle or is involuntarily terminated from such program by the employer may be eligible to be provided with a further certificate, or renewal of certification, of eligibility for participation under this subtitle, such eligible person must be provided by the Secretary of Labor, after consultation with the implementing official, with a case manager.

''SEC. 4494. INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES.

''(a) IN GENERAL.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall jointly provide for an outreach and public information program—

''(A) to inform eligible persons about the employment and job training opportunities available under this subtitle and under other provisions of law; and

''(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this subtitle.

''(2) The Secretary, in consultation with the Secretary of Labor and the Secretary of Veterans Affairs, shall promote the development of employment and job training opportunities for eligible persons by encouraging potential employers to make programs of job training under this subtitle available for eligible persons, by advising other appropriate Federal departments and agencies of the program established by this subtitle, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to eligible persons.

''(b) COORDINATION.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

''(c) AGENCY RESOURCES.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall make available such personnel as are necessary to facilitate the effective implementation of this subtitle.

''(2) In carrying out the responsibilities of the Secretary of Labor under this subtitle, the Secretary of Labor shall make maximum use of the services of Directors and Assistant Directors for Veterans' Employment and Training, disabled veterans' outreach program specialists, and employees of local offices, appointed pursuant to sections 4103, 4103A, and 4104 of title 38, United States Code. To the extent that the implementing official withholds approval of eligible persons' applications under this subtitle pursuant to section 4485(b)(2)(B), the Secretary of Labor shall take steps to assist such eligible persons in taking advantage of opportunities that may be available to them under any other program carried out with funds provided by the Secretary of Labor.

''(d) SMALL BUSINESS.—The implementing official shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for eligible persons.

''(e) ASSISTANCE TO PARTICIPATE.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall assist eligible persons and employers desiring to participate under this subtitle in making application and completing necessary certifications.

''(f) COLLECTION OF CERTAIN INFORMATION.—The Secretary of Labor shall, on a not less frequent than quarterly basis, collect and compile from the heads of State employment services and Directors for Veterans' Employment and Training for each State information available to such heads and Directors, and derived from programs carried out in their respective States, with respect to the numbers of eligible persons who receive counseling services pursuant to section 4493, who are referred to employers participating under this subtitle, who participate in programs of job training under this subtitle (including a description of the nature of the training and salaries that are part of such programs), and who complete such programs, and the reasons for eligible persons' noncompletion.

''SEC. 4495. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—(1) Of the amounts authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $75,000,000 shall be made available for the purpose of making payments to employers under this subtitle. Of the amounts made available pursuant to section 1302(a) of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160, 107 Stat. 1783], $25,000,000 shall be made available for the purpose of making payments to employers under this subtitle. The Secretary of Veterans Affairs and the Secretary of Labor shall submit an estimate to the Secretary of the amount needed to carry out any agreement entered into under section 4484(a), including administrative costs referred to in paragraph (3). Such agreements shall include administrative procedures to ensure the prompt and timely payments to employers by the implementing official.

''(2) Amounts made available pursuant to this section for a fiscal year shall remain available until the end of the second fiscal year following the fiscal year in which such amounts were appropriated.

''(3) Of the amounts made available pursuant to this section for a fiscal year, six percent of such amounts may be used for the purpose of administering this subtitle, including reimbursing expenses incurred.

''(b) AVAILABILITY OF DEOBLIGATED FUNDS.—Notwithstanding any other provision of law, any funds made available pursuant to this section for a fiscal year which are obligated for the purpose of making payments under section 4487 on behalf of an eligible person (including funds so obligated which previously had been obligated for such purpose on behalf of another eligible person and were thereafter deobligated) and are later deobligated shall immediately upon deobligation become available to the implementing official for obligation for such purpose. The further obligation of such funds by such official for such purpose shall not be delayed, directly or indirectly, in any manner by any officer or employee in the executive branch.

''SEC. 4496. TIME PERIODS FOR APPLICATION AND INITIATION OF TRAINING.

''Assistance may not be paid to an employer under this subtitle—

''(1) on behalf of an eligible person who initially applies for a program of job training under this subtitle after September 30, 1996; or

''(2) for any such program which begins after March 31, 1997.

''SEC. 4497. TREATMENT OF CERTAIN PROVISIONS OF LAW UPON TRANSFER OF AMOUNTS PROVIDED UNDER THIS ACT.

''(a) CONTINGENT AMENDMENT.—If a transfer is made in accordance with section 4501(c) of the full amount of the amount provided under section 4495(a) for the program established under section 4484(a), then, effective as of the date of the enactment of this Act [Oct. 23, 1992], the first sentence of section 4484(a) is amended by striking 'the Secretary shall carry out' and inserting 'the Secretary may carry out'.

''(b) PUBLICATION IN THE FEDERAL REGISTER.—If the transfer described in subsection (a) is made, then the Secretary of Defense shall promptly publish in the Federal Register a notice of such transfer. Such notice shall specify the date on which such transfer occurred.''

[Section 610(a)(2)(B) of Pub. L. 103–446 provided that: ''The amendment made by subparagraph (A) [amending section 4486(d)(2) of Pub. L. 102–484, set out above] shall

apply with respect to programs of training under the Service Members Occupational Conversion and Training Act of 1992 [subtitle G of title XLIV of Pub. L. 102–484, set out above] beginning after the date of the enactment of this Act [Nov. 2, 1994].'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1143a. Encouragement of postseparation public and community service

(a) IN GENERAL.—The Secretary of Defense shall implement a program to encourage members and former members of the armed forces to enter into public and community service jobs after discharge or release from active duty.

(b) PERSONNEL REGISTRY.—The Secretary shall maintain a registry of members and former members of the armed forces discharged or released from active duty who request registration for assistance in pursuing public and community service job opportunities. The registry shall include information on the particular job skills, qualifications, and experience of the registered personnel.

(c) REGISTRY OF PUBLIC SERVICE AND COMMUNITY SERVICE ORGANIZATIONS.—The Secretary shall also maintain a registry of public service and community service organizations. The registry shall contain information regarding each organization, including its location, its size, the types of public and community service positions in the organization, points of contact, procedures for applying for such positions, and a description of each such position that is likely to be available. Any such organization may request registration under this subsection and, subject to guidelines prescribed by the Secretary, be registered.

(d) ASSISTANCE TO BE PROVIDED.—(1) The Secretary shall actively attempt to match personnel registered under subsection (b) with public and community service job opportunities and to facilitate job-seeking contacts between such personnel and the employers offering the jobs.

(2) The Secretary shall offer personnel registered under subsection (b) counselling services regarding—

(A) public service and community service organizations; and

(B) procedures and techniques for qualifying for and applying for jobs in such organizations.

(3) The Secretary may provide personnel registered under subsection (b) with access to the interstate job bank program of the United States Employment Service if the Secretary determines that such program meets the needs of separating members of the armed forces for job placement.

(e) CONSULTATION REQUIREMENT.—In carrying out this section, the Secretary shall consult closely with the Secretary of Labor, the Secretary of Veterans Affairs, the Secretary of Education, the Director of the Office of Personnel Management, appropriate representatives of State and local governments, and appropriate representatives of businesses and nonprofit organizations in the private sector.

(f) DELEGATION.—The Secretary, with the concurrence of the Secretary of Labor, may designate the Secretary of Labor as the executive agent of the Secretary of Defense for carrying out all or part of the responsibilities provided in this section. Such a designation does not relieve the Secretary of Defense from the responsibility for the implementation of the provisions of this section.

(g) DEFINITIONS.—In this section, the term ''public service and community service organization'' includes the following organizations:

(1) Any organization that provides the following services:

(A) Elementary, secondary, or postsecondary school teaching or administration.

(B) Support of such teaching or school administration.

(C) Law enforcement.

(D) Public health care.

(E) Social services.

(F) Any other public or community service.

(2) Any nonprofit organization that coordinates the provision of services described in paragraph (1).

(h) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Transportation shall implement the requirements of this section for the Coast Guard.

(Added Pub. L. 102–484, div. D, title XLIV, § 4462(a)(1), Oct. 23, 1992, 106 Stat. 2738; amended Pub. L. 103–337, div. A, title V, § 542(a)(3), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Pub. L. 103–337, § 542(a)(3)(A), struck out ''; Department of Defense'' after ''service'' in section catchline.

Subsec. (h). Pub. L. 103–337, § 542(a)(3)(B), added subsec. (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PROGRAM OF EDUCATIONAL LEAVE RELATING TO CONTINUING PUBLIC AND COMMUNITY SERVICE

Section 4463 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title V, § 561(*o*), Nov. 30, 1993, 107 Stat. 1668, provided that:

''(a) PROGRAM.—Under regulations prescribed by the Secretary of Defense after consultation with the Secretary of Transportation and subject to subsections (b) and (c), the Secretary concerned may grant to an eligible member of the Armed Forces a leave of absence for a period not to exceed one year for the purpose of permitting the member to pursue a program of education or training (including an internship) for the development of skills that are relevant to the performance of public and community service. A program of education or training referred to in the preceding sentence includes any such program that is offered by the Department of Defense or by any civilian educational or training institution.

''(b) ELIGIBILITY REQUIREMENT.—(1) A member may not be granted a leave of absence under this section unless the member agrees in writing—

''(A) diligently to pursue employment in public service and community service organizations upon the separation of the member from active duty in the Armed Forces; and

''(B) to serve in the Ready Reserve of an armed force, upon such separation, for a period of 4 months for each month of the period of the leave of absence.

''(2)(A) A member may not be granted a leave of absence under this section until the member has completed any period of extension of enlistment or reenlistment, or any period of obligated active duty service, that the member has incurred under section 708 of title 10, United States Code.

''(B) The Secretary concerned may waive the limitation in subparagraph (A) for a member who enters into an agreement with the Secretary for the member to serve in the Ready Reserve of a reserve component for a period equal to the uncompleted portion of the member's period of service referred to in that subparagraph. Any such period of agreed service in the Ready Reserve shall be in addition to any other period that the member is obligated to serve in a reserve component.

''(c) TREATMENT OF LEAVE OF ABSENCE.—A leave of absence under this section shall be subject to the provisions of subsections (c) and (d) of section 708 of title 10, United States Code.

''(d) EXCLUSION FROM END STRENGTH LIMITATION.—A member of the Armed Forces, while on leave granted pursuant to this section, may not be counted for purposes of any provision of law that limits the active duty strength of the member's armed force.

''(e) DEFINITIONS.—In this section:

''(1) The term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code.

''(2) The term 'eligible member of the Armed Forces' means a member of the Armed Forces who is eligible for an educational leave of absence under section 708(e) of such title.

''(3) The term 'public service and community service organization' has the meaning given such term in section 1143a of such title (as added by section 531(a)).

''(f) EXPIRATION.—The authority to grant a leave of absence under subsection (a) shall expire on September 30, 1999.''

INCREASED EARLY RETIREMENT RETIRED PAY FOR PUBLIC OR COMMUNITY SERVICE

Section 4464 of Pub. L. 102–484 provided that:

''(a) RECOMPUTATION OF RETIRED PAY.—(1) If a member or former member of the Armed Forces retired under section 4403(a) [10 U.S.C. 1293 note] or any other provision of law authorizing retirement from the Armed Forces (other than for disability) before the completion of at least 20 years of active duty service (as computed under the applicable provision of law) is employed by a public service or community service organization listed on the registry maintained under section 1143a(c) of title 10, United States Code (as added by section 4462(a)), within the period of the member's enhanced retirement qualification period, the member's or former member's retired or retainer pay shall be recomputed effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age.

''(2) For purposes of recomputing a member's or former member's retired pay—

''(A) the years of the member's or former member's employment by a public service or community service organization referred to in paragraph (1) during the member's or former member's enhanced retirement qualification period shall be treated as years of active duty service in the Armed Forces; and

''(B) in applying section 1401a of title 10, United States Code, the member's or former member's years of active duty service shall be deemed as of the date of retirement to have included the years of employment referred to in subparagraph (A).

''(3) Section 1405(b) of title 10, United States Code, shall apply in determining years of service under this subsection.

''(4) In this subsection, the term 'enhanced retirement qualification period', with respect to a member or former member retired under a provision of law referred to in paragraph (1), means the period beginning on the date of the retirement of the member or former member and ending the number of years (including any fraction of a year) after that date which when added to the number of years (including any fraction of a year) of service credited for purposes of computing the retired pay of the member or former member upon retirement equals 20 years.

''(b) SBP ANNUITIES.—(1) Effective on the first day of the first month after a member or former member of the Armed Forces retired under a provision of law referred to in subsection (a)(1) attains 62 years of age or, in the event of death before attaining that age, would have attained that age, the base amount applicable under section 1447(2) of title 10, United States Code, to any Survivor Benefit Plan annuity provided by that member or former member shall be recomputed. For the recomputation the total years (including any fraction of a year) of the member's or former member's active service shall be treated as having included the member's or former member's years (including any fraction of a year) of employment referred to in subsection (a)(1) as of the date when the member or former member became eligible for retired pay under this section.

''(2) In this subsection, the term 'Survivor Benefit Plan' means the plan established under subchapter II of chapter 73 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1142, 1144 of this title; title 42 section 12622.

§1144. Employment assistance, job training assistance, and other transitional services: Department of Labor

(a) IN GENERAL.—(1) The Secretary of Labor, in conjunction with the Secretary of Defense, the Secretary of Transportation, and the Secretary of Veterans Affairs, shall establish and maintain a program to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the armed forces under the jurisdiction of the Secretary concerned who are being separated from active duty and the spouses of such members. Such services shall be provided to a member during the 180-day period before the member is separated from active duty.

(2) The Secretary of Defense, the Secretary of Transportation, and the Secretary of Veterans Affairs shall cooperate with the Secretary of Labor in establishing and maintaining the program under this section.

(3) The Secretaries referred to in paragraph (1) shall enter into a detailed agreement to carry out this section. The agreement shall be entered into no later than 60 days after the date of the enactment of this section.

(b) ELEMENTS OF PROGRAM.—In establishing and carrying out a program under this section, the Secretary of Labor shall do the following:

(1) Provide information concerning employment and training assistance, including (A) labor market information, (B) civilian work place requirements and employment opportunities, (C) instruction in resumé preparation, and (D) job analysis techniques, job search techniques, and job interview techniques.

(2) In providing information under paragraph (1), use experience obtained from implementation of the pilot program established under section 408 of Public Law 101–237.

(3) Provide information concerning Federal, State, and local programs, and programs of military and veterans' service organizations, that may be of assistance to such members after separation from the armed forces, including, as appropriate, the information and services to be provided under section 1142 of this title.

(4) Inform such members that the Department of Defense and the Department of Transportation are required under section 1143(a) of this title to provide proper certification or verification of job skills and experience acquired while on active duty that may have application to employment in the civilian sector for use in seeking civilian employment and in obtaining job search skills.

(5) Provide information and other assistance to such members in their efforts to obtain loans and grants from the Small Business Administration and other Federal, State, and local agencies.

(6) Provide information about the geographic areas in which such members will relocate after separation from the armed forces, including, to the degree possible, information about employment opportunities, the labor market, and the cost of living in those areas (including, to the extent practicable, the cost and availability of housing, child care, education, and medical and dental care).

(7) Work with military and veterans' service organizations and other appropriate organizations in promoting and publicizing job fairs for such members.

(8) Provide information regarding the public and community service jobs program carried out under section 1143a of this title.

(c) PARTICIPATION.—The Secretary of Defense and the Secretary of Transportation shall encourage and otherwise promote maximum participation by members of the armed forces eligible for assistance under the program carried out under this section.

(d) USE OF PERSONNEL AND ORGANIZATIONS.—In carrying out the program established under this section, the Secretaries may—

(1) provide, as the case may be, for the use of disabled veterans outreach program specialists, local veterans' employment representatives, and other employment service personnel funded by the Department of Labor to the extent that the Secretary of Labor determines that such use will not significantly interfere with the provision of services or other benefits to eligible veterans and other eligible recipients of such services or benefits;

(2) use military and civilian personnel of the Department of Defense and the Department of Transportation;

(3) use personnel of the Veterans Benefits Administration of the Department of Veterans Affairs and other appropriate personnel of that Department;

(4) use representatives of military and veterans' service organizations;

(5) enter into contracts with public or private entities; and

(6) take other necessary action to develop and furnish the information and services to be provided under this section.

(e) FUNDING.—(1) There is authorized to be appropriated to the Department of Labor to carry out this section $11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995.

(2) There is authorized to be appropriated to the Department of Veterans Affairs to carry out this section $6,500,000 for each of fiscal years 1993, 1994, and 1995.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 102–190, div. A, title X, § 1061(a)(6), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§ 4462(c), 4469, Oct. 23, 1992, 106 Stat. 2740, 2752; Pub. L. 103–337, div. A, title V, § 543(b), Oct. 5, 1994, 108 Stat. 2769.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 101–510, which was approved Nov. 5, 1990.

Section 408 of Public Law 101–237, referred to in subsec. (b)(2), is set out as a note under section 4100 of Title 38, Veterans' Benefits.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 543(b)(1), inserted ", the Secretary of Transportation," after "Secretary of Defense" and substituted "concerned" for "of a military department".

Subsec. (a)(2). Pub. L. 103–337, § 543(b)(2), inserted ", the Secretary of Transportation," after "Secretary of Defense".

Subsec. (b)(4). Pub. L. 103–337, § 543(b)(3), substituted "Department of Defense and the Department of Transportation are" for "Department of Defense is".

Subsec. (c). Pub. L. 103–337, § 543(b)(4), inserted "and the Secretary of Transportation" after "Secretary of Defense".

Subsec. (d)(2). Pub. L. 103–337, § 543(b)(5), inserted "and the Department of Transportation" after "Department of Defense".

1992—Subsec. (b)(8). Pub. L. 102–484, § 4462(c), added par. (8).

Subsec. (e)(1). Pub. L. 102–484, § 4469(1), substituted "$11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995" for "$4,000,000 for fiscal year 1991 and $9,000,000 for each of fiscal years 1992 and 1993".

Subsec. (e)(2). Pub. L. 102–484, § 4469(2), substituted "$6,500,000 for each of fiscal years 1993, 1994, and 1995" for "$1,000,000 for fiscal year 1991 and $4,000,000 for each of fiscal years 1992 and 1993".

1991—Subsec. (b)(1). Pub. L. 102–190, § 1061(a)(6)(A), substituted "resumé" for "resume" in cl. (C).

Subsec. (b)(3). Pub. L. 102–190, § 1061(a)(6)(B), substituted "veterans' service organizations" for "veterans service organization" and "armed forces" for "Armed Forces".

Subsec. (b)(6). Pub. L. 102–190, § 1061(a)(6)(C), substituted "those areas" for "such area".

IMPLEMENTATION REPORTS

Section 502(c) of Pub. L. 101–510 provided that:

"(1) Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Labor shall submit to Congress a report setting forth the agreement entered into to carry out section 1144 of title 10, United States Code, as added by subsection (a). The report shall include a detailed description of the responsibilities of the Secretary of Labor, the Secretary of Defense, and the Secretary of Veterans Affairs in carrying out that section and of the steps that have been taken to carry out those responsibilities.

"(2) Not later than one year after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress a report containing a detailed evaluation of the program carried out under that section to the date of the submission of the report.

''(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Secretary of Defense and the Secretary of Labor.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§1145. Health benefits

(a) TRANSITIONAL HEALTH CARE.—(1) For the applicable time period described in paragraph (2), a member of the armed forces who is involuntarily separated from active duty during the nine-year period beginning on October 1, 1990 (and the dependents of the member), shall be entitled to receive—

(A) medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

(B) health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(2) Transitional health care shall be available under subsection (a) for a specified time period beginning on the date on which the member is involuntarily separated as follows:

(A) For members involuntarily separated with less than six years of active service, 60 days.

(B) For members involuntarily separated with six or more years of active service, 120 days.

(b) CONVERSION HEALTH POLICIES.—(1) The Secretary of Defense shall inform each member referred to in subsection (a) before the date of the member's discharge or release from active duty of the availability for purchase by the member of a conversion health policy for the member and the dependents of that member. A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.

(2) If a member referred to in subsection (a) purchases a conversion health policy during the period applicable to the member (or within a reasonable time after that period as prescribed by the Secretary of Defense), the Secretary shall provide health care, or pay the costs of health care provided, to the member and the dependents of the member—

(A) during the 18-month period beginning on the date on which coverage under the conversion health policy begins; and

(B) for a condition (including pregnancy) that exists on such date and for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(3) The Secretary of Defense may arrange for the provision of health care described in paragraph (2) through a contract with the insurer offering the conversion health policy.

(4) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to provide the conversion health policy required under paragraph (1) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall offer such a policy under the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (5), a member purchasing a policy from the Secretary shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(5) The amount paid by a member who purchases a conversion health policy from the Secretary of Defense under paragraph (4) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(6) In order to reduce premiums required under paragraph (4), the Secretary of Defense may offer a conversion health policy that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(c) HEALTH CARE FOR CERTAIN SEPARATED MEMBERS NOT OTHERWISE ELIGIBLE.—(1) Consistent with the authority of the Secretary concerned to designate certain classes of persons as eligible to receive health care at a military medical facility, the Secretary concerned should consider authorizing, on an individual basis in cases of hardship, the provision of that care for a member who is separated from the armed forces during the nine-year period beginning on October 1, 1990, and is ineligible for transitional health care under subsection (a) or does not obtain a conversion health policy (or a dependent of the member).

(2) The Secretary concerned shall give special consideration to requests for such care in cases in which the condition for which treatment is required was incurred or aggravated by the member or the dependent before the date of the separation of the member, particularly if the condition is a result of the particular circumstances of the service of the member.

(d) DEFINITION.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of a person who is no longer a member of the armed forces or a covered beneficiary.

(e) COAST GUARD.—The provisions of this section shall apply to members of the Coast Guard (and their dependents) involuntarily separated from active duty during the five-year period beginning on October 1, 1994. The Secretary of Transportation shall implement this section for the Coast Guard.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1555; amended Pub. L. 102–484, div. D, title XLIV, §4407(a), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–160, div. A, title V, §561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, §542(a)(4), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–337 added subsec. (e).

1993—Subsecs. (a)(1), (c)(1). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (b)(1). Pub. L. 102–484, § 4407(a)(1), inserted at end ''A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.''

Subsec. (b)(2)(A). Pub. L. 102–484, § 4407(a)(2), substituted ''18-month period'' for ''one-year period''.

Subsec. (b)(4) to (6). Pub. L. 102–484, § 4407(a)(3), added pars. (4) to (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

For provisions relating to the application of the amendments by section 4407 of Pub. L. 102–484 to conversion health policies provided under subsec. (b) of this section and in effect on Oct. 23, 1992, see section 4407(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

TRANSITIONAL PROVISION

Section 4408(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall provide a period for the enrollment for health benefits coverage under this section [enacting section 1078a of this title and provisions set out as notes under this section and section 1086a of this title] by members and former members of the Armed Services for whom the availability of transitional health care under section 1145(a) of title 10, United States Code, expires before the October 1, 1994, implementation date of section 1078a of such title, as added by subsection (a).''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

For provisions prohibiting purchase of, and allowing cancellation of, conversion health policies under subsec. (b) of this section on or after Oct. 1, 1994, see section 4408(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078a, 1142 of this title.

§ 1146. Commissary and exchange benefits

The Secretary of Defense shall prescribe regulations to allow a member of the armed forces who is involuntarily separated from active duty during the nine-year period beginning on October 1, 1990, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the five-year period beginning October 1, 1994.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(5), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Pub. L. 103–337 inserted at end ''The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the five-year period beginning October 1, 1994.''

1993—Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1147. Use of military family housing

(a) TRANSITION FOR INVOLUNTARILY SEPARATED MEMBERS.—(1) The Secretary of a military department may, pursuant to regulations prescribed by the Secretary of Defense, permit individuals who are involuntarily separated during the nine-year period beginning on October 1, 1990, to continue for not more than 180 days after the date of such separation to reside (along with other members of the individual's household) in military family housing provided or leased by the Department of Defense to such individual as a member of the armed forces.

(2) The Secretary of Transportation may prescribe regulations to permit members of the Coast Guard who are involuntarily separated during the five-year period beginning October 1, 1994, to continue for not more than 180 days after the date of such separation to reside (along with others of the member's household) in military family housing provided or leased by the Coast Guard to the individual as a member of the armed forces.

(b) RENTAL CHARGES.—The Secretary concerned, pursuant to such regulations, shall require a reasonable rental charge for the continued use of military family housing under subsection (a), except that such Secretary may waive all or any portion of such charge in any case of hardship.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, § 561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(6), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 designated existing provisions as par. (1) and added par. (2).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1148. Relocation assistance for personnel overseas

The Secretary of Defense and the Secretary of Transportation shall develop a program specifically to assist members of the armed forces stationed overseas who are preparing for discharge or release from active duty, and the dependents of such members, in readjusting to civilian life. The program shall focus on the special needs and requirements of such members and dependents due to their overseas locations and shall include, to the maximum extent possible, computerized job relocation assistance and job search information.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–337, div. A, title V, §542(a)(7), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Pub. L. 103–337 inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PILOT PROGRAM

Section 502(d) of Pub. L. 101–510 provided that: ''During fiscal year 1991, the Secretary shall carry out the program required by section 1148 of title 10, United States Code, as added by subsection (a), at not less than 10 military installations located outside the United States.''

§1149. Excess leave and permissive temporary duty

Under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard, the Secretary concerned shall grant a member of the armed forces who is to be involuntarily separated such excess leave (for a period not in excess of 30 days), or such permissive temporary duty (for a period not in excess of 10 days), as the member requires in order to facilitate the member's carrying out necessary relocation activities (such as job search and residence search activities), unless to do so would interfere with military missions.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 103–337, div. A, title V, §542(a)(8), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Pub. L. 103–337 inserted ''or the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''of the military department'' before ''concerned''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§1150. Affiliation with Guard and Reserve units: waiver of certain limitations

(a) PREFERENCE FOR CERTAIN PERSONS.—A person who is separated from the armed forces during the nine-year period beginning on October 1, 1990, and who applies to become a member of a National Guard or Reserve unit within one year after the date of such separation shall be given preference over other equally qualified applicants for existing or projected vacancies within the unit to which the member applies.

(b) LIMITED WAIVER OF STRENGTH LIMITATIONS.—Under regulations prescribed by the Secretary of Defense, a person covered by subsection (a) who enters a National Guard or Reserve unit pursuant to an application described in such subsection may be retained in that unit for up to three years without regard to reserve-component strength limitations so long as the individual maintains good standing in that unit.

(c) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Transportation shall prescribe regulations to implement this section for the Coast Guard.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 102–484, div. A, title V, §514, Oct. 23, 1992, 106 Stat. 2406; Pub. L. 103–160, div. A, title V, §561(j), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, §542(a)(9), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (a). Pub. L. 102–484 struck out ''involuntarily'' after ''who is''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§1151. Assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may establish a program—

(1) to assist eligible members of the armed forces after their separation from active duty to obtain—

(A) certification or licensure as elementary or secondary school teachers; or

(B) the credentials necessary to serve as teachers' aides; and

(2) to facilitate the employment of such members by local educational agencies identified under subsection (b)(2) as experiencing a shortage of teachers or teachers' aides.

(b) STATES WITH ALTERNATIVE CERTIFICATION REQUIREMENTS AND TEACHER AND TEACHER'S AIDE SHORTAGES.—Upon the establishment of the placement program authorized by subsection (a), the Secretary of Defense and the Secretary of Transportation, in consultation with the Secretary of Education, shall—

(1) conduct a survey of States to identify those States that have alternative certification or licensure requirements for teachers, including those States that grant credit for service in the armed forces toward satisfying certification or licensure requirements for teachers;

(2) periodically request information from States identified under paragraph (1) to identify in these States those local educational agencies that—

(A) are receiving grants under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701[1] et seq.) as a result of

[1] So in original. Probably should be ''6301''.

having within their jurisdictions concentrations of children from low-income families; and

(B) are also experiencing a shortage of qualified teachers, in particular a shortage of science, mathematics, or engineering teachers; and

(3) periodically request information from all States to identify local educational agencies that—

(A) are receiving grants under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701[1] et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; and

(B) are experiencing a shortage of teachers' aides.

(c) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection to participate in the placement program authorized by subsection (a) if the member—

(A) during the nine-year period beginning on October 1, 1990, is discharged or released from active duty after six or more years of continuous active duty immediately before the discharge or release;

(B) has received—

(i) in the case of a member applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(ii) in the case of a member applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) satisfies such other criteria for selection as the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard, may prescribe.

(2) For purposes of this section, a former member of the armed forces who did not meet the minimum educational qualification criterion set forth in paragraph (1)(B)(i) for teacher placement assistance before discharge or release from active duty shall be considered to be a member satisfying such educational qualification criterion upon satisfying that criterion within five years after discharge or release from active duty.

(3) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

(d) INFORMATION REGARDING PLACEMENT PROGRAM.—The Secretary of Defense and the Secretary of Transportation shall provide information regarding the placement program, and make applications for the program available, to members as part of preseparation counseling provided under section 1142 of this title. The information provided to members shall identify those States that have alternative certification or licensure requirements for teachers, including those States that grant credit for service in the armed forces toward satisfying such requirements, and indicate those local educational agencies identified under subsection (b)(2) as experiencing a shortage of qualified teachers or teachers' aides.

(e) SELECTION OF PARTICIPANTS.—(1) Selection of members to participate in the placement program authorized by subsection (a) shall be made on the basis of applications submitted to the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, on a timely basis. An application shall be in such form and contain such information as the Secretaries may require. An application shall be considered to be submitted on a timely basis if the application is submitted as follows:

(A) Except as provided in subparagraphs (B) and (C), not later than one year after the date of the discharge or release of the applicant from active duty.

(B) In the case of an applicant discharged or released from active duty before January 19, 1994, not later than one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995.

(C) In the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (c)(2) after the date of the discharge or release of the applicant from active duty, not later than one year after the date on which the applicant becomes educationally qualified.

(2) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretaries shall give priority to members who—

(A) have educational or military experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational or military experience in another subject area identified by the Secretaries, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(3) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsections (g) and (h) with respect to that member.

(4)(A) The Secretaries shall provide under the program for identifying, during each fiscal year in the period referred to in subsection (c)(1)(A), noncommissioned officers who, on or before the end of such fiscal year, will have completed 10 or more years of continuous active duty, who have the potential to perform competently as elementary or secondary school teachers, but who do not satisfy the minimum educational qualification criterion under subsection (c)(1)(B)(i) for teacher placement assistance.

(B) The Secretaries shall inform noncommissioned officers identified under subparagraph (A)

of the opportunity to qualify in accordance with subsection (c)(2) for teacher placement assistance under the program.

(f) AGREEMENT.—A member selected to participate in the placement program authorized by subsection (a) shall be required to enter into an agreement with the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard, in which the member agrees—

(1) to obtain, within such time as the Secretary concerned may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of a member selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than five school years with a local educational agency identified under subsection (b)(2), to begin the school year after obtaining that certification or licensure; or

(B) in the case of a member selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than five school years with a local educational agency identified under subsection (b)(3), to begin the school year after obtaining the necessary credentials.

(g) STIPEND FOR PARTICIPANTS.—(1) Except as provided in paragraph (2), the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A member who is separated under the special separation benefits program under section 1174a of this title, receives voluntary separation payments under section 1175 of this title, or retires pursuant to the authority provided in section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 1293 note) shall not be paid a stipend under paragraph (1).

(3) A stipend paid under paragraph (1) shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(h) GRANTS TO FACILITATE PLACEMENT.—(1) In the case of a participant in the placement program obtaining teacher certification or licensure, the Secretary of Defense and the Secretary of Transportation may offer to enter into an agreement under this subsection with the first local educational agency identified under subsection (b)(2) that employs the participant as a full-time elementary or secondary school teacher after the participant obtains teacher certification or licensure.

(2) In the case of a participant in the program obtaining credentials to serve as a teacher's aide, the Secretary concerned may offer to enter into an agreement under this subsection with the first local educational agency identified under subsection (b)(3) that employs the participant as a full-time teacher's aide.

(3) Under an agreement referred to in paragraph (1) or (2)—

(A) the local educational agency shall agree to employ the participant full time for not less than five consecutive school years (at a basic salary to be certified to the Secretary concerned) in a school of the local educational agency serving a concentration of children from low-income families; and

(B) the Secretary concerned shall agree to pay to the local educational agency an amount based upon the basic salary paid by the local educational agency to the participant as a teacher or teacher's aide. The rate of payment by the Secretary concerned shall be as follows:

(i) For the first school year of employment, 50 percent of the basic salary, except that the payment may not exceed $25,000.

(ii) For the second school year of employment, 40 percent of the basic salary, except that the payment may not exceed $10,000.

(iii) For the third school year of employment, 30 percent of the basic salary, except that the payment may not exceed $7,500.

(iv) For the fourth school year of employment, 20 percent of the basic salary, except that the payment may not exceed $5,000.

(v) For the fifth school year of employment, 10 percent of the basic salary, except that the payment may not exceed $2,500.

(4) Payments required under paragraph (2) may be made by the Secretary concerned in such installments as the Secretary concerned may determine.

(5) If a participant leaves the employment of a local educational agency before the end of the five years of required service, the local educational agency shall reimburse the Secretary concerned in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the five years of required service.

(6) The Secretary concerned may not make a grant under this subsection to a local educational agency if the Secretary concerned determines that the agency terminated the employment of another employee in order to fill the vacancy so created with a participant.

(7)(A) In addition to the agreements referred to in paragraphs (1) and (2), the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may enter into an agreement directly with a State identified pursuant to subsection (b)(1) to allow the State to arrange the placement of participants in the placement program with local educational agencies identified pursuant to subsection (b)(2) or (b)(3). The Secretary concerned shall consult with the Secretary of Education in entering into agreements with States under this paragraph.

(B) With respect to an agreement under this paragraph with a State, nothing in this paragraph shall be construed to negate or supersede the authority of any appropriate official or entity of the State to approve those portions of the agreement that are not under the jurisdiction of the chief executive officer of the State.

(C) The Secretary concerned may reserve up to 10 percent of the funds made available to carry out the placement program for a fiscal year for the placement of participants through agreements entered into under this paragraph. Paragraphs (3) through (6) shall apply with respect to any placement made through such an agreement.

(i) REIMBURSEMENT UNDER CERTAIN CIRCUMSTANCES.—(1) If a participant in the placement program fails to obtain teacher certification or licensure or employment as an elementary or secondary school teacher or employment as a teacher's aide as required under the agreement or voluntarily leaves, or is terminated for cause, from the employment during the five years of required service, the participant shall be required to reimburse the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard, for any stipend paid to the participant under subsection (g)(1) in an amount that bears the same ratio to the amount of the stipend as the unserved portion of required service bears to the five years of required service.

(2) The obligation to reimburse the Secretary concerned under this subsection is, for all purposes, a debt owing the United States. A discharge in bankruptcy under title 11 shall not release a participant from the obligation to reimburse the Secretary concerned. Any amount owed by a participant under paragraph (1) shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of ninety days or less and shall accrue from the day on which the participant is first notified of the amount due.

(j) EXCEPTIONS TO REIMBURSEMENT PROVISIONS.—(1) A participant in the placement program shall not be considered to be in violation of an agreement entered into under subsection (f) during any period in which the participant—

(A) is pursuing a full-time course of study related to the field of teaching at an eligible institution;

(B) is serving on active duty as a member of the Armed Forces;

(C) is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician;

(D) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(E) is seeking and unable to find full-time employment as a teacher or teacher's aide in an elementary or secondary school for a single period not to exceed 27 months; or

(F) satisfies the provisions of additional reimbursement exceptions that may be prescribed by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard.

(2) A participant shall be excused from reimbursement under subsection (i) if the participant becomes permanently totally disabled as established by sworn affidavit of a qualified physician. The Secretary concerned may also waive reimbursement in cases of extreme hardship to the participant, as determined by the Secretary concerned.

(k) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Palau, and the Virgin Islands.

(2) The term ''alternative certification or licensure requirements'' means State or local teacher certification or licensure requirements that permit a demonstrated competence in appropriate subject areas gained in careers outside of education to be substituted for traditional teacher training course work.

(Added Pub. L. 102–484, div. D, title XLIV, § 4441(a)(1), Oct. 23, 1992, 106 Stat. 2725; amended Pub. L. 103–35, title II, § 201(f)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title V, § 561(k), title XIII, § 1331(a)–(c)(1), (d)–(g), Nov. 30, 1993, 107 Stat. 1668, 1791–1793; Pub. L. 103–337, div. A, title V, § 543(c), title X, § 1070(a)(7), title XI, § 1131(a), (b), Oct. 5, 1994, 108 Stat. 2769, 2855, 2871; Pub. L. 103–382, title III, § 391(b)(1), (2), Oct. 20, 1994, 108 Stat. 4021.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2)(A), (3)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (e)(1)(B), is the date of enactment of Pub. L. 103–337, which was approved Oct. 5, 1994.

The Higher Education Act of 1965, referred to in subsec. (g)(3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, Education, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 543(c)(1), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (b). Pub. L. 103–337, § 543(c)(2), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (b)(2)(A), (3)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grants under''.

Subsec. (c)(1). Pub. L. 103–337, § 543(c)(3)(A), struck out ''by the Secretary of Defense'' after ''selection'' in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 103–337, § 1131(a)(1), substituted ''nine-year period beginning on October 1, 1990'' for ''seven-year period beginning on October 1, 1992''.

Subsec. (c)(1)(C). Pub. L. 103–337, §543(c)(3)(B), inserted ''of Defense, or the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary''.

Subsec. (c)(4). Pub. L. 103–337, §1131(a)(2), struck out par. (4) which read as follows: ''The Secretary may accept an application from a member who was discharged or released from active duty during the period beginning on October 1, 1990, and ending on October 1, 1992, if the member otherwise satisfies the eligibility criteria specified in paragraph (1).''

Subsec. (d). Pub. L. 103–337, §543(c)(4), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (e)(1). Pub. L. 103–337, §543(c)(5), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in first sentence and substituted ''Secretaries'' for ''Secretary'' before ''may'' in second sentence.

Pub. L. 103–337, §1131(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Selection of members to participate in the placement program authorized by subsection (a) shall be made on the basis of applications submitted to the Secretary of Defense not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (c)(2), not later than one year after the date on which the applicant becomes educationally qualified. In the case of members referred to in subsection (c)(3), the Secretary shall establish a reasonable time period after October 23, 1992, for the submission of applications. An application shall be in such form and contain such information as the Secretary may require.''

Subsec. (e)(2). Pub. L. 103–337, §543(c)(6), substituted ''Secretaries'' for ''Secretary'' in introductory provisions and in subpar. (B).

Subsec. (e)(3). Pub. L. 103–337, §543(c)(7), inserted ''of Defense, and the Secretary of Transportation with respect to the Coast Guard,'' after ''The Secretary'' and ''concerned'' after ''unless the Secretary''.

Subsec. (e)(4). Pub. L. 103–337, §543(c)(8), substituted ''Secretaries'' for ''Secretary'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 103–337, §543(c)(9), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in introductory provisions and ''concerned'' after ''the Secretary'' in par. (1).

Subsec. (g)(1). Pub. L. 103–337, §543(c)(10), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in introductory provisions.

Subsec. (h)(1). Pub. L. 103–337, §543(c)(11), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (h)(2). Pub. L. 103–337, §543(c)(11)(B), inserted ''concerned'' after ''Secretary''.

Subsec. (h)(3). Pub. L. 103–337, §543(c)(11)(B), inserted ''concerned'' after ''Secretary'' wherever appearing.

Subsec. (h)(3)(B)(v). Pub. L. 103–337, §1070(a)(7), inserted ''school'' after ''For the fifth''.

Subsec. (h)(4) to (6). Pub. L. 103–337, §543(c)(11)(B), inserted ''concerned'' after ''Secretary'' wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103–337, §543(c)(12)(A), inserted ''of Defense, and the Secretary of Transportation with respect to the Coast Guard,'' after ''the Secretary'' in first sentence and ''concerned'' after ''The Secretary'' in second sentence.

Subsec. (h)(7)(C). Pub. L. 103–337, §543(c)(12)(B), inserted ''concerned'' after ''The Secretary''.

Subsec. (i)(1). Pub. L. 103–337, §543(c)(13)(A), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense''.

Subsec. (i)(2). Pub. L. 103–337, §543(c)(13)(B), inserted ''concerned'' after ''Secretary'' in two places.

Subsec. (j)(1)(F). Pub. L. 103–337, §543(c)(14)(A), inserted '', or the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense''.

Subsec. (j)(2). Pub. L. 103–337, §543(c)(14)(B), inserted ''concerned'' after ''Secretary'' in two places.

1993—Subsec. (c)(1)(A). Pub. L. 103–160, §561(k), substituted ''seven-year period'' for ''five-year period''.

Subsec. (c)(2) to (4). Pub. L. 103–160, §1331(b)(1), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (e)(1). Pub. L. 103–160, §§1331(a), (b)(2)(A), substituted ''not later than one year after the date of the discharge or release'' for ''before the date of the discharge or release'' and inserted before period at end of first sentence ''or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (c)(2), not later than one year after the date on which the applicant becomes educationally qualified''.

Pub. L. 103–35 substituted ''October 23, 1992,'' for ''the date of the enactment of this section''.

Subsec. (e)(4). Pub. L. 103–160, §1331(b)(2)(B), added par. (4).

Subsec. (f)(2)(A), (B). Pub. L. 103–160, §1331(c)(1)(A), substituted ''five school years'' for ''two school years''.

Subsec. (g)(2). Pub. L. 103–160, §1331(g), added par. (2) and struck out former par. (2) which read as follows: ''A member who is entitled to benefits under section 1174a or 1175 of this title or is given early retirement under section 4403 of the National Defense Authorization Act for Fiscal Year 1993 shall not be paid a stipend under paragraph (1).''

Subsec. (h)(1), (2). Pub. L. 103–160, §1331(e), substituted ''may'' for ''shall''.

Subsec. (h)(3)(A). Pub. L. 103–160, §1331(c)(1)(B), substituted ''five consecutive school years'' for ''two consecutive school years''.

Subsec. (h)(3)(B). Pub. L. 103–160, §1331(d), substituted ''based upon the basic salary paid by the local educational agency to the participant as a teacher or teacher's aide. The rate of payment by the Secretary shall be as follows:'' for ''equal to the lesser of—'', added cls. (i) to (v), and struck out former cls. (i) and (ii) which read as follows:

''(i) the basic salary to be paid by the local educational agency to the participant during the two years; and

''(ii) $50,000.''

Subsec. (h)(5). Pub. L. 103–160, §1331(c)(1)(C), substituted ''five years'' for ''two years'' in two places.

Subsec. (h)(7). Pub. L. 103–160, §1331(f), added par. (7).

Subsec. (i)(1). Pub. L. 103–160, §1331(c)(1)(D), substituted ''five years'' for ''two years'' in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1331(h) of Pub. L. 103–160 provided that: ''The amendments made by subsections (c) and (d) [amending this section and sections 1598 and 2410j of this title] shall not apply with respect to—

''(1) persons selected by the Secretary of Defense before the date of the enactment of this Act [Nov. 30, 1993] to participate in the teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of title 10, United States Code; or

''(2) agreements entered into by the Secretary before such date with local educational agencies under such sections.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1142, 1598, 2410c of this title.

§1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may enter into an agreement with the Attorney General to establish or participate in a program to assist eligible members and former members of the

armed forces to obtain employment as law enforcement officers with eligible law enforcement agencies following the discharge or release of such members or former members from active duty. Eligible law enforcement agencies shall consist of State law enforcement agencies, local law enforcement agencies, and Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior).

(b) ELIGIBLE MEMBERS.—Any individual who, during the 6-year period beginning on October 1, 1993, is a member of the armed forces and is separated with an honorable discharge or is released from service on active duty characterized as honorable by the Secretary concerned shall be eligible to participate in a program covered by an agreement referred to in subsection (a).

(c) SELECTION.—In the selection of applicants for participation in a program covered by an agreement referred to in subsection (a), preference shall be given to a member or former member who—

(1) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note); and

(2) has a military occupational specialty, training, or experience related to law enforcement (such as service as a member of the military police) or satisfies such other criteria for selection as the Secretary, the Attorney General, or a participating eligible law enforcement agency prescribed in accordance with the agreement.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may provide funds to the Attorney General for grants under this section to reimburse participating eligible law enforcement agencies for costs, including salary and fringe benefits, of employing members or former members pursuant to a program referred to in subsection (a).

(2) No grant with respect to an eligible member or former member may exceed a total of $50,000.

(3) Any grant with respect to an eligible member or former member shall be disbursed within 5 years after the date of the placement of a member or former member with a participating eligible law enforcement agency.

(4) Preference in awarding grants through existing law enforcement hiring programs shall be given to State or local law enforcement agencies or Indian tribes that agree to hire eligible members and former members.

(e) ADMINISTRATIVE EXPENSES.—Ten percent of the amount, if any, appropriated for a fiscal year to carry out the program established pursuant to subsection (a) may be used to administer the program.

(f) REQUIREMENT FOR APPROPRIATION.—No person may be selected to participate in the program established pursuant to subsection (a) unless a sufficient amount of appropriated funds is available at the time of the selection to satisfy the obligations to be incurred by the United States under an agreement referred to in subsection (a) that applies with respect to the person.

(g) CONDITIONAL EXPANSION OF PLACEMENT TO INCLUDE FIREFIGHTERS.—(1) Subject to paragraph (2), the Secretary may expand the placement activities authorized by subsection (a) to include the placement of eligible members and former members and eligible civilian employees of the Department of Defense as firefighters or members of rescue squads or ambulance crews with public fire departments.

(2) The Secretary may implement the expansion authorized by this subsection only if the Secretary certifies to Congress not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995 that such expansion will facilitate personnel transition programs of the Department of Defense. The expansion may be made through a program covered by an agreement referred to in subsection (a), if feasible, or in such other manner as the Secretary considers appropriate.

(3) A civilian employee of the Department of Defense shall be eligible to participate in the expanded placement activities authorized under this subsection if the employee, during the six-year period beginning October 1, 1993, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

(Added Pub. L. 103–160, div. A, title XIII, § 1332(a), Nov. 30, 1993, 107 Stat. 1793; amended Pub. L. 103–337, div. A, title V, § 543(d), title XI, § 1132(a)(1), Oct. 5, 1994, 108 Stat. 2771, 2872.)

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 103–337, which was approved Oct. 5, 1994.

AMENDMENTS

1994—Pub. L. 103–337, § 543(d), inserted ", and the Secretary of Transportation with respect to the Coast Guard," after "Secretary of Defense" in subsecs. (a) and (d).

Pub. L. 103–337, § 1132(a)(1), substituted "eligible members and former members" for "separated members" in section catchline and amended text generally, substituting subsecs. (a) to (g) for former subsecs. (a) to (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§ 1153. Assistance to separated members to obtain employment with health care providers

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may establish a program to assist eligible members of the armed forces to obtain employment with health care providers upon their discharge or release from active duty.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection to participate in the program established under subsection (a) if the member—

(A) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense

Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note) during the six-year period beginning on October 1, 1993;

(B) has received an associate degree, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) has a military occupational specialty, training, or experience related to health care, is likely to be able to obtain such training in a short period of time (as determined by the Secretary concerned), or satisfies such other criteria for selection as the Secretary concerned may prescribe.

(2) For purposes of this section, a former member of the armed forces who did not meet the minimum educational qualification criterion set forth in paragraph (1)(B) for placement assistance before discharge or release from active duty shall be considered to be a member satisfying such educational qualification criterion upon satisfying that criterion within five years after discharge or release from active duty.

(3) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary concerned not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (b)(2), not later than one year after the date on which the applicant becomes educationally qualified. An application shall be in such form and contain such information as the Secretaries may require.

(2) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (d) with respect to that member.

(3)(A) The Secretaries shall provide under the program for identifying, during each fiscal year in the period referred to in subsection (b)(1)(A), noncommissioned officers who, on or before the end of such fiscal year, will have completed 10 or more years of continuous active duty, who have the potential to perform competently in employment positions with health care providers, but who do not satisfy the minimum educational qualification criterion under subsection (b)(1)(B) for placement assistance.

(B) The Secretaries shall inform noncommissioned officers identified under subparagraph (A) of the opportunity to qualify in accordance with subsection (b)(2) for placement assistance under the program.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense and the Secretary of Transportation may enter into an agreement with a health care provider to assist eligible members selected under subsection (c) to obtain suitable employment with the health care provider. Under such an agreement, a health care provider shall agree to employ a participant in the program on a full-time basis for at least five years.

(2) Under an agreement referred to in paragraph (1), the Secretary concerned shall agree to pay to the health care provider involved an amount based upon the basic salary paid by the health care provider to the participant. The rate of payment by the Secretary concerned shall be as follows:

(A) For the first year of employment, 50 percent of the basic salary, except that the payment may not exceed $25,000.

(B) For the second year of employment, 40 percent of the basic salary, except that the payment may not exceed $10,000.

(C) For the third year of employment, 30 percent of the basic salary, except that the payment may not exceed $7,500.

(D) For the fourth year of employment, 20 percent of the basic salary, except that the payment may not exceed $5,000.

(E) For the fifth year of employment, 10 percent of the basic salary, except that the payment may not exceed $2,500.

(3) Payments required under paragraph (2) may be made by the Secretary concerned in such installments as the Secretary concerned may determine.

(4) If a participant who is placed under this program leaves the employment of the health care provider before the end of the five years of required employment service, the provider shall reimburse the Secretary concerned in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the five years of required service.

(5) The Secretary concerned may not make a grant under this subsection to a health care provider if the Secretary concerned determines that the provider terminated the employment of another employee in order to fill the vacancy so created with a participant in this program.

(e) AGREEMENTS WITH STATES.—(1) In addition to the agreements referred to in subsection (d)(1), the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, may enter into an agreement directly with a State to allow the State to arrange the placement of participants in the program with health care providers. Paragraphs (2) through (5) of subsection (d) shall apply with respect to any placement made through such an agreement.

(2) The Secretary concerned may reserve up to 10 percent of the funds made available to carry out the program for a fiscal year for the placement of participants through agreements entered into under paragraph (1).

(f) DEFINITIONS.—In this section, the term ''State'' includes the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Palau, and the Virgin Islands.

(Added Pub. L. 103–160, div. A, title XIII, § 1332(b), Nov. 30, 1993, 107 Stat. 1795; amended Pub. L. 103–337, div. A, title V, § 543(e), Oct. 5, 1994, 108 Stat. 2771.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 543(e)(1), inserted ‘‘, and the Secretary of Transportation with respect to the Coast Guard,’’ after ‘‘Secretary of Defense’’.

Subsec. (b)(1). Pub. L. 103–337, § 543(e)(2), struck out ‘‘by the Secretary of Defense’’ after ‘‘selection’’ in introductory provisions and inserted ‘‘concerned’’ after ‘‘Secretary’’ in two places in subpar. (C).

Subsec. (c)(1). Pub. L. 103–337, § 543(e)(3), inserted ‘‘, and the Secretary of Transportation with respect to the Coast Guard,’’ after ‘‘Secretary of Defense’’ and ‘‘concerned’’ after ‘‘to the Secretary’’ and substituted ‘‘Secretaries may’’ for ‘‘Secretary may’’.

Subsec. (c)(2). Pub. L. 103–337, § 543(e)(4), inserted ‘‘of Defense, and the Secretary of Transportation with respect to the Coast Guard,’’ after ‘‘The Secretary’’ and ‘‘concerned’’ after ‘‘unless the Secretary’’.

Subsec. (c)(3). Pub. L. 103–337, § 543(e)(5), substituted ‘‘Secretaries’’ for ‘‘Secretary’’ in subpars. (A) and (B).

Subsec. (d)(1). Pub. L. 103–337, § 543(e)(6)(A), inserted ‘‘and the Secretary of Transportation’’ after ‘‘Secretary of Defense’’.

Subsec. (d)(2) to (5). Pub. L. 103–337, § 543(e)(6)(B), inserted ‘‘concerned’’ after ‘‘Secretary’’ wherever appearing.

Subsec. (e)(1). Pub. L. 103–337, § 543(e)(7)(A), inserted ‘‘, and the Secretary of Transportation with respect to the Coast Guard,’’ after ‘‘the Secretary of Defense’’.

Subsec. (e)(2). Pub. L. 103–337, § 543(e)(7)(B), inserted ‘‘concerned’’ after ‘‘The Secretary’’.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

CHAPTER 59—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
[1162, 1163. Repealed.]
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
[1167. Repealed.]
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.
1174a. Special separation benefits programs.
1175. Voluntary separation incentive.
1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service.
1177. Members who are permanently nonworldwide assignable: mandatory discharge or retirement; counseling.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title V, § 560(a)(2), title XVI, § 1671(b)(10), Oct. 5, 1994, 108 Stat. 2778, 3013, struck out items 1162 ‘‘Reserves: discharge’’ and 1163 ‘‘Reserve components: members; limitations on separation’’ and added item 1177.

1992—Pub. L. 102–484, div. A, title V, § 541(b), Oct. 23, 1992, 106 Stat. 2413, added item 1176.

1991—Pub. L. 102–190, div. A, title VI, §§ 661(a)(2), 662(a)(2), Dec. 5, 1991, 105 Stat. 1395, 1398, added items 1174a and 1175.

1980—Pub. L. 96–513, title V, § 501(15), Dec. 12, 1980, 94 Stat. 2908, struck out item 1167 ‘‘Regular warrant officers: severance pay’’ and added item 1174.

1973—Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147, added item 1173.

1968—Pub. L. 90–235, § 3(a)(1)(B), Jan. 2, 1968, 81 Stat. 757, added items 1169 to 1172.

1962—Pub. L. 87–651, title I, § 106(c), Sept. 7, 1962, 76 Stat. 508, added item 1168.

§ 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial; or

(3) in time of war, by order of the President.

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 89.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1161(a)	50:739 (words before semicolon, less applicability to Navy and Marine Corps warrant officers).	May 5, 1950, ch. 169, § 10 (less applicability to Navy and Marine Corps warrant officers), 64 Stat. 146.
1161(b)	50:739 (less words before semicolon, less applicability to Navy and Marine Corps warrant officers).	

In subsections (a) and (b), the word ‘‘commissioned’’ is inserted since, for the Army and the Air Force, the term ‘‘officer’’ is intended to have the same meaning in 50:739 as it has in the Uniform Code of Military Justice (article 4). For Navy warrant officers see section 6408 of this title.

In subsection (b), the words ‘‘from his place of duty’’ are omitted as surplusage. The words ‘‘at least’’ are substituted for the words ‘‘or more’’. The words ‘‘by a court other than a court-martial or other military court’’ are substituted for the words ‘‘by the civil authorities’’.

RESTORATION OF RETIRED PAY TO OFFICERS DROPPED FROM ROLLS AFTER DECEMBER 31, 1954 AND BEFORE AUGUST 25, 1958

Pub. L. 85–754, Aug. 25, 1958, 72 Stat. 847, provided: ‘‘That notwithstanding any other provisions of law, a former retired officer dropped from the rolls under section 10 of the Act of May 5, 1950, ch. 169 (64 Stat. 146), or section 1161 of title 10, United States Code, after December 31, 1954, and before the date of enactment of this Act [Aug. 25, 1958] shall, for the purposes of entitlement to retired or retirement pay after the date of enactment of this Act, be treated as if he had not been dropped from the rolls. Such an officer is also entitled to retroactive retired or retirement pay for the period beginning on the date he was dropped from the rolls and ending on the date of enactment of this Act, as if he had not been dropped from the rolls.

‘‘SEC. 2. A former retired officer covered by this Act is subject to the penal, prohibitory, and restrictive pro-

visions of law applicable to the pay and civil employment of retired officers of the Armed Forces and is not entitled to any other benefit provided by law or regulation for retired officers of the Armed Forces. After the date of enactment of this Act [Aug. 25, 1958], such a former retired officer may, in the discretion of the President, have his entitlement to retired or retirement pay under this Act terminated for any reason for which any retired officer may be dismissed from, or dropped from the rolls of, any Armed Force.

''SEC. 3. Appropriations available for the payment of retired pay to members of the Armed Forces are available for payments under this Act.''

CROSS REFERENCES

Dismissed officer's right to trial by court-martial, see section 804 of this title.

Forfeiture of pay when dropped from rolls, see section 803 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12683 of this title; title 37 section 803.

[§§ 1162, 1163. Repealed Pub. L. 103–337, div. A, title XVI, § 1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

Section 1162, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 2, 1958, Pub. L. 85–861, § 1(27), 72 Stat. 1450, related to discharge of Reserves. See sections 12681 and 12682 of this title.

Section 1163, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 7, 1962, Pub. L. 87–651, title I, § 106(a), 76 Stat. 508; Dec. 30, 1987, Pub. L. 100–224, § 4, 101 Stat. 1538, related to limitations on separation of Reserve members from their reserve components. See sections 12683 to 12686 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90–130, § 1(5), 81 Stat. 374; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(41), 94 Stat. 2923; Oct. 12, 1982, Pub. L. 97–295, § 1(16), 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1164(a)	10:600*l*(c) (as applicable to men). 10:600r(c) (as applicable to 10:600*l*(c)). 34:430(c) (as applicable to men).	May 29, 1954, ch. 249, §§ 14(c), (e) (as applicable to (c)), 21(c) (as applicable to § 14(c)), 68 Stat. 163, 168.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1164(b)	34:430c (as applicable to 34:430(c)). 10:600*l*(c) (less applicability to men). 34:430(c) (less applicability to men).	
1164(c)	10:600*l*(e) (as applicable to 10:600*l*(c)). 34:430(e) (as applicable to 34:430(c)).	

In subsections (a) and (b), the words ''Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section'' are omitted as covered by section 46 of the bill and section 14(g) of the source statute. The words ''Unless retired or separated on or before the expiration of that period'' are inserted for clarity. The words ''becomes 62[55] years of age'' are substituted for the words ''attains the age of sixty-two * * * or the age of fifty-five''.

In subsection (c), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''determination of his'' are inserted for clarity. The words ''he would otherwise be required to be separated under this section'' are substituted for the words ''separation would otherwise be required''. The words ''proper'', ''which is required'', ''possible'', and ''a period of'' are omitted as surplusage.

AMENDMENTS

1982—Pub. L. 97–295, § 1(16), substituted a colon for a semicolon after ''officers'' in section catchline.

1980—Subsec. (b). Pub. L. 96–513 redesignated former subsec. (c) as (b).

Subsec. (c). Pub. L. 96–513 redesignated former subsec. (c) as (b).

1967—Subsec. (a). Pub. L. 90–130 struck out ''male'' before ''warrant officer''.

Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90–130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Section 46 of act Aug. 10, 1956, provided that:

''(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, set out as a note under section 580 of this title] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later than that date which is 60 days after the date on which he attains the age of 64.

''(b) The separation of any person who, on November 1, 1954, was a female permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 55 has completed less than 20 years of active service that could be credited to her under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, set out as a note under section 580 of this

title] may be deferred by the Secretary concerned until she completes 20 years of that service, but not later than that date which is 60 days after the date on which she attains the age of 60.''

CROSS REFERENCES

Retirement of warrant officers for age, see section 1263 of this title.

Suspension during war or emergency, see sections 644, 12243 of this title.

§ 1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Dec. 12, 1980, Pub. L. 96–513, title I, § 109(b)(1), 94 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1165	10:600d (less last 36 words of last sentence). 34:135d (less last 36 words of last sentence).	May 29, 1954, ch. 249, § 6 (less last 36 words of last sentence), 68 Stat. 159.

The words ''in his discretion'' are omitted as surplusage. The last 10 words of the last sentence are inserted for clarity.

AMENDMENTS

1980—Pub. L. 96–513 authorized entitlement, if the regular warrant officer is eligible therefor, to separation pay under section 1174.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Coast Guard temporary warrant officers, appointment, see section 214 of Title 14, Coast Guard.

Elimination for unfitness or unsatisfactory performance, see sections 576, 1166 of this title.

Promotion, see section 573 et seq. of this title.

Suspension during war or emergency, see section 644 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 515, 1166, 1174 of this title.

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 576 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494; Dec. 12, 1980, Pub. L. 96–513, title I, § 109(b)(2), 94 Stat. 2870; Dec. 5, 1991, Pub. L. 102–190, div. A, title XI, § 1131(5), 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1166(a)	10:600m (less last 21 words of 3d sentence). 10:600(d) (as applicable to 10:600m). 34:430a (less last 21 words of 3d sentence). 34:135(d) (as applicable to 34:430a).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 15), 14(e) (as applicable to § 15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166(b)	10:600*l*(e) (as applicable to 10:600m). 34:430(e) (as applicable to 34:430a).	

In subsection (a), the words ''he shall be separated'' are substituted for the words ''his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated'' and ''his appointment shall be terminated''. The words ''at least three'' are substituted for the words ''more than three'' for clarity.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to be retired or separated under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''determination of his'' are inserted for clarity. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in subsec. (a), is set out as a note under section 580 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 576'' for ''section 560''.

1980—Subsec. (a). Pub. L. 96–513 provided that officers discharged under this section are entitled, if eligible therefor, to separation pay under section 1174 or severance pay under section 286a of title 14.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Suspension during war or emergency, see section 644 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 515, 576, 1174 of this title; title 14 section 286a.

[§1167. Repealed. Pub. L. 96–513, title I, §109(b)(3), Dec. 12, 1980, 94 Stat. 2870]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87–509, §4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87–649, §6(f)(3), 76 Stat. 494, related to severance pay of regular warrant officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 87–651, title I, §106(b), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

The new section 1168 of title 10 is transferred from section 1218(a) and (c) of title 10 as being more appropriate in the chapter on separation.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189 substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

§1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary concerned;

(2) by sentence of a general or special court martial; or

(3) as otherwise provided by law.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

(1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and

(2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within three months before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided: By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code, effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 5303A.

§1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§ 1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added Pub. L. 93–64, title I, § 102, July 9, 1973, 87 Stat. 147.)

EFFECTIVE DATE

Section effective July 1, 1973, see section 206 of Pub. L. 93–64, set out as a note under section 401 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 404, 406; title 38 section 5303A.

§ 1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580, 1177, or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Secretary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member—

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received. Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(Added Pub. L. 96–513, title I, § 109(c), Dec. 12, 1980, 94 Stat. 2870; amended Pub. L. 97–22, § 10(b)(10)(A), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, §§ 911(a), (b), 923(b), title X, § 1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub. L. 98–498, title III, § 320(a)(2), Oct. 19, 1984, 98 Stat. 2308; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, § 501(a)–(d), (g), (h), Nov. 5, 1990, 104 Stat. 1549–1551; Pub. L. 102–190, div. A, title XI, § 1131(6), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–160, div. A, title V, § 501(a), Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, § 560(c), Oct. 5, 1994, 108 Stat. 2778.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337 inserted ‘‘, 1177,’’ after ‘‘section 580’’.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ‘‘six’’ for ‘‘five’’.

1991—Subsec. (a)(1). Pub. L. 102–190 substituted ‘‘section 580’’ for ‘‘section 564’’.

1990—Subsec. (a). Pub. L. 101–510, § 501(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 101–510, § 501(g)(1), substituted ‘‘or under section 564 or 6383 of this title’’ for ‘‘, under section 564 or 6383 of this title, or under section 603 or 604 of the Defense Officer Personnel Management Act’’ and struck out ‘‘or release’’ after ‘‘that discharge’’.

Subsec. (a)(2). Pub. L. 101–510, § 501(b)(1), substituted ‘‘six or more’’ for ‘‘five or more’’.

Pub. L. 101–510, § 501(a)(2), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (b). Pub. L. 101–510, § 501(a)(3), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsec. (c). Pub. L. 101–510, § 501(h)(1), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, § 501(g)(2), struck out ‘‘after September 14, 1981,’’ after ‘‘member who’’ in introductory provisions.

Pub. L. 101–510, § 501(b)(1), substituted ‘‘six or more’’ for ‘‘five or more’’ in introductory provisions.

Subsec. (c)(3). Pub. L. 101–510, § 501(b)(2), substituted ‘‘at least six years’’ for ‘‘at least five years’’.

Subsec. (d). Pub. L. 101–510, § 501(h)(2), inserted heading.

Subsec. (d)(1). Pub. L. 101–510, § 501(c)(1)(A), struck out ‘‘or $30,000, whichever is less’’ after ‘‘active duty’’.

Subsec. (d)(2). Pub. L. 101–510, § 501(c)(1)(B), struck out ‘‘, but in no event more than $15,000’’ after ‘‘under clause (1)’’.

Subsec. (e). Pub. L. 101–510, § 501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ‘‘A member who—

‘‘(1) is discharged or released from active duty at his request;

‘‘(2) is released from active duty for training; or

‘‘(3) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service;

is not eligible for separation pay under this section.’’

Subsec. (f). Pub. L. 101–510, § 501(h)(3), inserted heading.

Subsec. (g). Pub. L. 101–510, § 501(h)(4), inserted heading.

Pub. L. 101–510, § 501(c)(2), struck out ‘‘(1)’’ after ‘‘(g)’’ and struck out par. (2) which read as follows: ‘‘The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law, other than section 1212 of this title, based on service in the armed forces may not exceed $30,000.’’

Subsec. (h). Pub. L. 101–510, § 501(h)(5), inserted heading.

Subsec. (i). Pub. L. 101–510, § 501(h)(6), inserted heading.

1989—Subsec. (h)(2). Pub. L. 101–189 substituted ‘‘Department of Veterans Affairs’’ for ‘‘Veterans’ Administration’’.

1984—Subsec. (h)(1). Pub. L. 98–498 substituted ‘‘separation pay, severance pay,’’ for ‘‘severance pay’’ before ‘‘or readjustment pay’’ in two places.

1983—Subsec. (c). Pub. L. 98–94, § 911(a), amended subsec. (c) generally, designating existing provisions as par. (1) and existing pars. (1) and (2) as subpars. (A) and (B), respectively, and in provisions preceding subpar. (A) substituted ‘‘Except as provided in paragraphs (2) and (3), a member’’ for ‘‘A member’’ and ‘‘fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay’’ for ‘‘less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do

not warrant such pay, to separation pay'', and added pars. (2) and (3).

Subsec. (f). Pub. L. 98–94, § 923(b), amended subsec. (f) generally, substituting ''each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded''.

Subsec. (g)(2). Pub. L. 98–94, § 911(b), inserted '', other than section 1212 of this title,'' after ''any other provision of law''.

Subsec. (i). Pub. L. 98–94, § 1007(c)(2), designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (c). Pub. L. 97–22 substituted ''after September 14, 1981,'' for ''on or after the effective date of the Defense Officer Personnel Management Act''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 501(b) of Pub. L. 103–160 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to any regular officer who is discharged after the date of the enactment of this Act [Nov. 30, 1993].

''(2) The amendment made by subsection (a) shall not apply with respect to an officer who on the date of the enactment of this Act has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 501(e) of Pub. L. 101–510 provided that:

''(1) Except as provided in paragraph (2), subsection (b) of section 1174 of title 10, United States Code, as added by subsection (a), and the amendments made by subsections (b), (c), and (d) [amending this section] shall apply with respect to a member of the Armed Forces who is discharged, or released from active duty, after the date of the enactment of this Act [Nov. 5, 1990].

''(2) The amendments made by subsection (b) [amending this section] shall not apply in the case of a member (other than a regular enlisted member) of the Armed Forces who (A) is serving on active duty on the date of the enactment of this Act, (B) is discharged, or released from active duty, after that date; and (C) on that date has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 911(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1983.''

Section 923(g) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section and sections 1401, 1402, 1402a, 3991, 3992, 6151, 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 8992 of title 10, United States Code, of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 642, 1165, 1166, 1174a, 1186, 6383, 14517, 14905 of this title.

§ 1174a. Special separation benefits programs

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) APPLICATION REQUIREMENTS.—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

(i) submit a request for separation under the program before the expiration of the member's term of enlistment; or

(ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pursuant to this section shall be considered a request for separation under the program.

(g) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

(h) TERMINATION OF PROGRAM.—(1) Except as provided in paragraph (2), the Secretary concerned may not conduct a program pursuant to this section after September 30, 1999.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added Pub. L. 102–190, div. A, title VI, §661(a)(1), Dec. 5, 1991, 105 Stat. 1394; amended Pub. L. 102–484, div. A, title X, §1052(15), div. D, title XLIV, §§4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2499, 2706, 2718; Pub. L. 103–35, title II, §202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title V, §§502, 561(g), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, §542(b), Oct. 5, 1994, 108 Stat. 2768.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §542(b)(1), substituted ''concerned'' for ''of each military department''.

Subsec. (d). Pub. L. 103–337, §542(b)(2), substituted ''concerned'' for ''of a military department''.

Subsec. (e)(3). Pub. L. 103–337, §542(b)(3), struck out ''of the military department'' after ''Secretary''.

Subsec. (h). Pub. L. 103–337, §542(b)(4), substituted ''concerned'' for ''of a military department''.

1993—Subsec. (c)(2). Pub. L. 103–160, §502, struck out ''before December 5, 1991'' after ''6 years''.

Subsec. (c)(3). Pub. L. 103–35, §202(a)(17)(A), made technical amendment to directory language of Pub. L. 102–484, §4422(a)(3). See 1992 Amendment note below.

Subsec. (c)(4). Pub. L. 103–35, §202(a)(17)(B), made technical amendment to directory language of Pub. L. 102–484, §4422(a)(4). See 1992 Amendment note below.

Subsec. (h)(1). Pub. L. 103–160, §561(g), substituted ''September 30, 1999'' for ''September 30, 1995''.

1992—Subsec. (b)(1). Pub. L. 102–484, §4422(a)(1), inserted ''or full-time National Guard duty'' after ''active duty''.

Subsec. (b)(2)(B). Pub. L. 102–484, §4405(a), inserted '', sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note)'' after ''chapter 58 of this title''.

Subsec. (c)(2). Pub. L. 102–484, §§1052(15), 4422(a)(2), substituted ''December 5, 1991'' for ''the date of the enactment of this section'' and inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(3). Pub. L. 102–484, §4422(a)(3), as amended by Pub. L. 103–35, §202(a)(17)(A), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(4). Pub. L. 102–484, §4422(a)(4), as amended by Pub. L. 103–35, §202(a)(17)(B), inserted ''and'' after semicolon at end and ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty'' the first place it appeared.

Subsec. (c)(5), (6). Pub. L. 102–484, §4424(a)(5), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''if a Reserve, is on an active duty list; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4405(c) of Pub. L. 102–484 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1175 of this title] shall apply as if included in sections 1174a and 1175 of title 10, United States Code, as enacted on December 5, 1991, but any benefits or services payable by reason of the applicability of the provisions of those amendments during the period beginning on December 5, 1991, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

REMEDY FOR INEFFECTIVE COUNSELING OF OFFICERS DISCHARGED FOLLOWING SELECTION BY EARLY DISCHARGE BOARDS

Pub. L. 103–160, div. A, title V, § 507, Nov. 30, 1993, 107 Stat. 1646, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(1), Oct. 5, 1994, 108 Stat. 2856, provided that:

''(a) PROCEDURE FOR REVIEW.—(1) The Secretary of each military department shall establish a procedure for the review of the individual circumstances of an officer described in paragraph (2) who is discharged, or who the Secretary concerned approves for discharge, following the report of a selection board convened by the Secretary to select officers for separation. The procedure established by the Secretary of a military department under this section shall provide that each review under that procedure be carried out by the Board for the Correction of Military Records of that military department.

''(2) This section applies in the case of any officer (including a warrant officer) who, having been offered the opportunity to be discharged or otherwise separated from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

''(A) elected not to accept such discharge or separation; and

''(B) submits an application under subsection (b) during the two-year period beginning on the later of the date of the enactment of this Act [Nov. 30, 1993] and the date of such discharge or separation.

''(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary concerned by application from the officer or former officer under regulations prescribed by the Secretary.

''(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

''(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

''(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

''(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

''(2) The Voluntary Separation Incentive program under section 1175 of such title.

''(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note).

''(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.''

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

Pub. L. 103–335, title VIII, § 8106A, Sept. 30, 1994, 108 Stat. 2645, provided that: ''In the case of members who separate from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program (10 U.S.C. 1174a) or a Voluntary Separation Incentive program (10 U.S.C. 1175) at any time after the enactment of this Act [Sept. 30, 1994], the separation payments paid such members who are also paid any bonus provided for in chapter 5, title 37, United States Code, during the same years in which they separate shall be reduced (but in no event to an amount less than zero) by an amount equal to any such bonus: *Provided*, That any future bonus payments to which such members would otherwise be entitled are rescinded: *Provided further*, That this measure will not apply to members who separate during the last year of a bonus paid pursuant to chapter 5, title 37, United States Code: *Provided further*, That civilian employees of the Department of Defense are prohibited from receiving voluntary separation payments if such employees are rehired by any agency of the Federal Government within one hundred and eighty days of separating from the Department of Defense: *Provided further*, That members who separate from active duty or full-time National Guard duty in a military department at any time after the enactment of this Act, are prohibited from receiving Special Separation Benefits program (10 U.S.C. 1174a) or Voluntary Separation Incentive program (10 U.S.C. 1175) payments if rehired in a civilian position by the Department of Defense within one hundred and eighty days of separating from active duty or full-time National Guard duty.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–139, title VIII, § 8127, Nov. 11, 1993, 107 Stat. 1469.

COMMENCEMENT OF PROGRAM

Section 661(b) of Pub. L. 102–190 provided that: ''The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON PROGRAMS

Section 663 of Pub. L. 102–190 directed Secretary, not later than 180 days after Dec. 5, 1991, to submit to Congress a report containing the Secretary's assessment of effectiveness of programs established under sections 1174a and 1175 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1152, 1153, 1175 of this title; title 29 section 1662d–1; title 38 section 3018B.

§ 1175. Voluntary separation incentive

(a) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Transportation may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c), for the period of time the member serves in a reserve component.

(b) The Secretary of Defense and the Secretary of Transportation may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After September 30, 1999, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service. The annual payment will be made for a period equal to the number of years that is equal to twice the number of years of service of the member.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3) A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Transportation for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the ''Voluntary Separation Incentive Fund'' (hereinafter in this subsection referred to as the ''Fund''). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Retirement Board of Actuaries (hereinafter in this subsection referred to as the ''Board'') shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Transportation may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added Pub. L. 102–190, div. A, title VI, § 662(a)(1), Dec. 5, 1991, 105 Stat. 1396; amended Pub. L. 102–484, div. A, title X, § 1052(16), div. D, title XLIV, §§ 4405(b), 4406(a), (b), 4422(b), Oct. 23, 1992, 106 Stat. 2499, 2706, 2707, 2719; Pub. L. 103–160, div. A, title V, §§ 502, 561(h), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, § 542(c), Oct. 5, 1994, 108 Stat. 2769.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–337, § 542(c)(1), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, § 542(c)(2), struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 103–337, § 542(c)(3), inserted ''and the Department of Transportation for the Coast Guard'' before period at end.

Subsec. (h)(3). Pub. L. 103–337, § 542(c)(4), inserted ''by the Secretary of Defense'' after ''incentive payments made'' and ''to the Secretary'' after ''shall be available''.

Subsec. (i). Pub. L. 103–337, § 542(c)(5), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

1993—Subsec. (d)(1). Pub. L. 103–160, § 502, struck out ''before December 5, 1991'' after ''active service''.

Subsecs. (d)(3), (h)(6). Pub. L. 103–160, § 561(h)(1), substituted ''September 30, 1999'' for ''September 30, 1995'' wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103–160, § 561(h)(2), substituted ''fiscal year 1999'' for ''fiscal year 1996''.

1992—Subsec. (a). Pub. L. 102–484, § 1052(16)(A), substituted ''reserve component'' for ''Reserve component'' after ''transfer to a''.

Subsec. (b)(1), (2). Pub. L. 102–484, § 4422(b)(1), (2), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (b)(3), (4). Pub. L. 102–484, § 4424(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''if a Reserve, is on the active duty list; and''.

Subsec. (d)(1). Pub. L. 102–484, § 1052(16)(B), substituted ''before December 5, 1991'' for ''prior to the time this provision is enacted''.

Subsec. (e)(2). Pub. L. 102–484, § 4406(a)(1), substituted ''may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.'' for ''shall forfeit an amount of voluntary separation incentive payable for the same period that is equal to the total amount of basic pay, or compensation, received.''

Subsec. (e)(3). Pub. L. 102–484, § 4406(a)(2), inserted at end ''If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.''

Subsec. (e)(6). Pub. L. 102–484, § 4406(b), struck out par. (6) which read as follows: ''Years of service that form the basis of the payment under paragraph (5) may not be counted in computing eligibility for, or the amount of, annuities under title 5 or any other law providing annuities to Federal civilian employees.''

Subsec. (j). Pub. L. 102–484, § 4405(b), added subsec. (j).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 4405(b) of Pub. L. 102–484 applicable as if included in this section as enacted Dec. 5, 1991, with any benefits or services payable by reason of applicability of that amendment during the period beginning Dec. 5, 1991, and ending Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub. L. 102–484, set out as a note under section 1174a of this title.

Section 4406(c) of Pub. L. 102–484 provided that: ''The amendments to section 1175 of title 10, United States Code, made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991.''

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department

and prohibiting such members from receiving Voluntary Separation Incentive program payments if rehired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Section 662(b) of Pub. L. 102–190 provided that: ''Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1152, 1153, 1174a of this title; title 29 section 1662d–1; title 38 section 3018B.

§1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) REGULAR MEMBERS.—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) RESERVE MEMBERS IN ACTIVE STATUS.—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 1332[1] of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 1332[1] of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 1332[1] of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 1332[1] of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 1332[1] of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102–484, div. A, title V, §541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103–160, div. A, title V, §562(a), Nov. 30, 1993, 107 Stat. 1669.)

REFERENCES IN TEXT

Section 1332 of this title, referred to in subsec. (b), was renumbered section 12732 of this title and amended generally by Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3000.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member's consent before the earlier of certain dates.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 562(b) of Pub. L. 103–160 provided that: ''Subsection (b) of section 1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.''

§1177. Members who are permanently nonworldwide assignable: mandatory discharge or retirement; counseling

(a) REQUIRED SEPARATION.—(1) Subject to paragraph (2), a member of the armed forces who is classified as permanently nonworldwide assignable due to a medical condition shall (except as provided in subsection (c)) be separated.

(2) Paragraph (1) shall not be in effect in the case of any of the armed forces if the Secretary concerned determines that the retention of permanently nonworldwide assignable members would not adversely affect the ability of that service to carry out its mission.

(3) A separation under paragraph (1) shall be made on a date determined by the Secretary concerned, which (except as provided in subsection (b)(2)) shall be as soon as practicable after the date on which the determination is made that the member should be so classified and not later than the last day of the twelfth month beginning after that date.

(b) FORM OF SEPARATION.—(1) If a member to be separated under this section is eligible to retire under any provision of law or to be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, the member shall be so retired or so transferred. Otherwise, the member shall be discharged.

(2) In the case of a member to be discharged under this section who on the date on which the member is to be discharged is within two years of qualifying for retirement under any provison[1]

[1] See References in Text note below.

[1] So in original. Probably should be ''provision''.

of law, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member may, as determined by the Secretary concerned, be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, and then be so retired or transferred, unless the member is sooner retired or discharged under any other provision of law.

(c) EXCEPTIONS.—The Secretary concerned may waive subsection (a) with respect to an individual member of the armed forces under the jurisdiction of that Secretary if the Secretary determines that there are circumstances that warrant the retention of that member. Such circumstances may include—

(1) consideration that the medical condition making the member permanently nonworldwide assignable was incurred in combat or otherwise as the result of an action of the member for which the member received a decoration or other recognition for personal bravery;

(2) consideration that the member has a specific proficiency or skill that is vital to the national security; and

(3) any other circumstance that the Secretary considers to be for the good of the service.

(d) COUNSELING ABOUT AVAILABLE MEDICAL CARE.—A member to be separated under this section shall be provided information, in writing, before such separation of the available medical care (through the Department of Veterans Affairs and otherwise) to treat the member's condition. Such information shall include identification of specific medical locations near the member's home of record or point of discharge at which the member may seek necessary medical care.

(e) SEPARATION TO BE CONSIDERED INVOLUNTARY.—A separation under this section shall be considered to be an involuntary separation for purposes of any other provision of law.

(Added Pub. L. 103–337, div. A, title V, § 560(a)(1), Oct. 5, 1994, 108 Stat. 2777.)

EFFECTIVE DATE

Section 560(b) of Pub. L. 103–337 provided that: ''Section 1177 of title 10, United States Code, as added by subsection (a), shall apply with respect to members determined to be permanently nonworldwide assignable by reason of a medical condition before, on, or after the date of the enactment of this Act [Oct. 5, 1994]. In the case of such a determination made before the date of the enactment of this Act, the period for the separation of the member specified in subsection (a) of such section shall be treated as beginning on the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1174 of this title.

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
1182. Boards of inquiry.
1183. Boards of review.
1184. Removal of officer: action by Secretary upon recommendation of board of review.
1185. Rights and procedures.
1186. Officer considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

AMENDMENTS

1984—Pub. L. 98–525, title V, § 524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in item 1181.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 617 of this title.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 98–525, title V, § 524(b)(1), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Pub. L. 98–525 substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in section catchline.

Subsecs. (a), (b). Pub. L. 98–525 amended subsecs. (a) and (b) generally, substituting ''Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(b)(3) of Pub. L. 98–525 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and the analysis to this chapter] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code, as in effect before that date.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 618, 1182, 1183, 1185, 1186 of this title.

§1182. Boards of inquiry

(a) The Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Each board of inquiry shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) A board of inquiry shall give a fair and impartial hearing to each officer required under section 1181 of this title to show cause for retention on active duty.

(c) If a board of inquiry determines that the officer has failed to establish that he should be retained on active duty, it shall send the record of its proceedings to a board of review convened under section 1183 of this title.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2872.)

§1183. Boards of review

(a) The Secretary of the military department concerned shall convene boards of review at such times as the Secretary may prescribe to review the cases of officers who a board of inquiry has determined have failed to establish that they should be retained on active duty. Each board of review shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) If, after reviewing the record of the case of any officer, a board of review determines that the officer has failed to establish that he should be retained on active duty, the board of review shall recommend to the Secretary concerned that the officer not be retained on active duty.

(c)(1) If, after reviewing the record of the case of any officer, a board of review determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention as a result of proceedings under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceeding, unless the findings or recommendations of the board of inquiry or board of review that considered his case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1184 of this title.

§ 1184. Removal of officer: action by Secretary upon recommendation of board of review

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active duty is recommended by a board of review convened under section 1183 of this title.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2874.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1186 of this title.

§ 1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2874.)

§ 1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 101–510, div. A, title V, § 501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 substituted ''section 1174(a)(2)'' for ''section 1174(b)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174, 1370, 3924, 8924 of this title.

§ 1187. Officers eligible to serve on boards

(a)(1) Each officer who serves on a board convened under this chapter shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Except as provided in paragraph (3), an officer may not serve on a board under this chapter unless such officer is serving on active duty in a grade above lieutenant colonel or commander and is senior in grade and rank to any officer considered by that board.

(3) If qualified officers on active duty are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing retired officers of the same armed force who are retired in a grade above lieutenant colonel or commander and whose retired grade is senior to the grade of any officer considered by the board. A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No person may be a member of more than one board convened under this chapter to consider the same officer.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2875.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1182, 1183 of this title.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.
1201. Regulars and members on active duty for more than 30 days: retirement.
1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
1203. Regulars and members on active duty for more than 30 days: separation.
1204. Members on active duty for 30 days or less: retirement.
1205. Members on active duty for 30 days or less: temporary disability retired list.

Sec.
1206. Members on active duty for 30 days or less: separation.
1207. Disability from intentional misconduct or willful neglect: separation.
1208. Computation of service.
1209. Transfer to inactive status list instead of separation.
1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
1211. Members on temporary disability retired list: return to active duty; promotion.
1212. Disability severance pay.
1213. Effect of separation on benefits and claims.
1214. Right to full and fair hearing.
1215. Members other than Regulars: applicability of laws.
1216. Secretaries: powers, functions, and duties.
1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to.
1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
1219. Statement of origin of disease or injury: limitations.
[1220. Repealed.]
1221. Effective date of retirement or placement of name on temporary disability retired list.

AMENDMENTS

1986—Pub. L. 99–661, div. A, title VI, §604(d)(4), Nov. 14, 1986, 100 Stat. 3876, struck out ''; disability from injury'' after ''30 days or less'' in items 1204, 1205, 1206.

1962—Pub. L. 87–651, title I, §107(e), Sept. 7, 1962, 76 Stat. 509, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in item 1218, and ''Statement of origin of disease or injury: limitations'' for ''Statement against interest void'' in item 1219, and struck out item 1220 ''Location of accredited representatives at military installations''.

1958—Pub. L. 85–861, §1(28)(C), Sept. 2, 1958, 72 Stat. 1451, added item 1221.

1957—Pub. L. 85–56, title XXII, §2201(31)(B), June 17, 1957, 71 Stat. 161, eff. Jan. 1, 1958, added items 1218 to 1220.

CROSS REFERENCES

Election of annuity, see section 1431 of this title.

Recomputation of retired or retainer pay to reflect later active duty, see section 1402 of this title.

Travel and transportation allowances, see sections 404 and 406 of Title 37, Pay and Allowances of the Uniformed Services.

Uniform date for retirement of Federal personnel, see section 8301 of Title 5, Government Organization and Employees.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1142, 1370, 1401a, 1402, 1402a, 1408, 1409, 1431, 1452 of this title; title 14 section 294; title 33 section 857a; title 37 sections 404, 406; title 42 sections 212, 213a.

§1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Sept. 2, 1958, Pub. L. 85–861, §1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub. L. 87–651, title I, §107(a), 76 Stat. 508; Sept. 19, 1978, Pub. L. 95–377, §3(1), 92 Stat. 719; Sept. 8, 1980, Pub. L. 96–343, §10(c)(1), 94 Stat. 1129; Dec. 12, 1980, Pub. L. 96–513, title I, §117, 94 Stat. 2878; Nov. 8, 1985, Pub. L. 99–145, title V, §513(a)(1)(A), 99 Stat. 627; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, §1621(a)(1), 103 Stat. 1602; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, §1671(c)(6), 108 Stat. 3014.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1201	37:272(a) (less clause (5), and less 2d proviso). 37:272(b) (less clause (5), and less 2d and last provisos). 37:272(f) (less applicability to 37:272(c) and (e)).	Oct. 12, 1949, ch. 681, §402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to §402(c) and (e)), 63 Stat. 816, 817, 820.

The words ''any other member'' are substituted for the words ''a member of a Reserve component'', in 37:272(a) and (b), since the words ''Reserve component'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component. The words ''active duty (other than for training)'' are substituted for the words ''extended active duty'' for clarity and to reflect the opinion of the Comptroller General in 31 Comp. Gen. 95, 99. The words ''if the Secretary also determines that'' are substituted for the words ''That if condition (5) above is met by a finding that'', in 37:272(a) and (b). The words ''of such member'', ''upon retirement'', and ''to receive'', in 37:272(a), are omitted as surplusage.

In clause (1), the words ''based upon accepted medical principles'' are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1201	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)'' in introductory provisions.

1989—Par. (3)(B). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

1980—Par. (3)(B)(iv). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect''.

Pub. L. 96–343 added cl. (iv).

1978—Par. (3)(B)(iv). Pub. L. 95–377 added cl. (iv) which provided additional condition, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95–377 provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

EXECUTIVE ORDER NO. 12239

Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limitations, was revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Grade on retirement for physical disability, see section 1372 of this title.

Members on temporary disability retired list, retirement under this section, see section 1210 of this title.

Pension to persons serving ten years, see section 6160 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1203, 1204, 1205, 1206, 1210, 1372, 1401, 1402, 1402a, 1406, 1407 of this title; title 42 section 213a.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Sept. 2, 1958, Pub. L. 85–861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub. L. 87–651, title I, § 107(a), 76 Stat. 508; Nov. 8, 1985, Pub. L. 99–145, title V, § 513(a)(1)(B), 99 Stat. 627; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), 108 Stat. 3014.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	37:272(a) (clause (5)). 37:272(b) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(a) (clause (5)), (b) (clause (5)), 63 Stat. 816, 817.

The first 82 words are inserted for clarity and are based on the rule stated in section 1201 of this title, which restates that part of 37:272(a), (b), and (f) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)''.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CROSS REFERENCES

Computation of retired pay, see section 1401 of this title.

Election as to computation of retired pay, see section 1402 of this title.

Grade on being placed on temporary disability retired list, see section 1372 of this title.

Temporary disability retired lists, see section 1376 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1204, 1205, 1206, 1372, 1376, 1401, 1402, 1402a, 1406, 1407 of this title; title 42 section 213a.

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title, or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Sept. 2, 1958, Pub. L. 85–861, § 1(28)(A), 72 Stat. 1451; Sept. 7, 1962, Pub. L. 87–651, title I, § 107(a), 76 Stat. 508; Sept. 19, 1978, Pub. L. 95–377, § 3(2), (3), 92 Stat. 719, 720; Sept. 8, 1980, Pub. L. 96–343, § 10(c)(2), (3), 94 Stat. 1129; Dec. 12, 1980, Pub. L. 96–513, title I, § 117, 94 Stat. 2878; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, § 1671(c)(6), 108 Stat. 3014.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203	37:272(a) (2d proviso). 37:272(b) (2d and last provisos).	Oct. 12, 1949, ch. 681, § 402(a) (2d proviso), (b) (2d and last provisos), 63 Stat. 816, 817.

To state fully in the revised section the rule contained in 37:272(a) (2d proviso) and 272(b) (2d and last provisos), the provisions of 37:272(a) (less clause (5), and less 1st proviso), 272(b) (less clause (5), and less 1st proviso) and 272(f) (less applicability to 37:272(c) and (e)), also contained in section 1201 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability,'' in 37:272(a) (2d proviso) and 37:272(b) (2d proviso).

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1201 or 1202 of this title.

Clause (4)(A) is substituted for 37:272(a) (1st 20 words of 2d proviso).

Clause (4)(B) is substituted for 37:272(b) (lst 20 words of 2d proviso).

Clause (4)(C) is substituted for 37:272(b) (last proviso).

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)'' in introductory provisions.

1989—Par. (4)(A) to (C). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1980—Par. (4)(A)(iii). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect''.

Pub. L. 96–343, § 10(c)(2), added cl. (iii).

Par. (4)(C). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' in cl. (iii).

Pub. L. 96–343, § 10(c)(3), substituted ''(i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' for ''the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency''.

1978—Par. (4)(A)(iii). Pub. L. 95–377, § 3(2), added cl. (iii) which provided additional conditions, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

Par. (4)(C). Pub. L. 95–377, § 3(3), designated existing conditions of performing active duty and incurred in line of duty in time of war or national emergency as cls. (i) and (ii) and added cl. (iii) providing additional condition, effective on Presidential determination, that the disability was incurred in line of duty during Sept. 15, 1978, through Sept. 30, 1979, and terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title.''

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95–377 provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

For provisions relating to the suspension of certain promotion and disability separation limitations, see Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, set out as a note under section 1201 of this title.

CROSS REFERENCES

Members on temporary disability retired list, separation under this section, see section 1210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1205, 1206, 1210, 1212 of this title; title 42 section 213a.

§ 1204. Members on active duty for 30 days or less: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 93; Nov. 8, 1985, Pub. L. 99–145, title V, § 513(a)(1)(A), 99 Stat. 627; Nov. 14, 1986, Pub. L. 99–661, div. A, title VI, § 604(d)(1), (2)(A), 100 Stat. 3876; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602; Oct. 23, 1992, Pub. L. 102–484, div. A, title V, § 516(a), 106 Stat. 2407.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1204	37:271(a). 37:272(c) (less clause (5), and less last proviso). 37:272(f) (as applicable to 37:272(c)).	Oct. 12, 1949, ch. 681, §§ 401(a), 402(c) (less clause (5), and less last proviso), 402(f) (as applicable to § 402(c)), 63 Stat. 816, 817, 820.

37:271(a) is omitted as surplusage. As it relates to retirement it is only a statement of the general coverage

of the retirement sections of this chapter. As it relates to separation it is only a statement of the general coverage of the separation sections of this chapter. The words ''a member * * * not covered by section 1201, 1202, or 1203 of this title'' are substituted for the words ''a member * * * other than those members covered in subsections (a) and (b) of this section''. The words ''if the Secretary also determines that'' are substituted for the words ''That if condition (5) above is met by a finding that'', in 37:272(c). The words ''of such member'', ''upon retirement'', and ''to receive'', in 37:272(c), are omitted as surplusage.

In clause (1), the words ''based upon accepted medical principles'' are inserted as a necessary implication of the rule stated in 37:272(c)(5).

In clause (2), the word ''disability'' is substituted for the word ''injury'' to make clear, in view of 37:278, that members on active duty for 30 days or less are on the same footing as those on active duty for a longer period, with respect to the effect of misconduct or neglect.

In clause (3), the words ''and was not incurred during a period of unauthorized absence'' are inserted to conform to other revised sections of this chapter and because of section 1207 of this title. The words ''full-time training duty, other full-time duty'' are omitted as covered by the words ''active duty''.

Clause (4)(A) is substituted for 37:272(f) (as applicable to 37:272(c)). 37:272(f) (proviso) is omitted as surplusage.

In clause (4)(B), the words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(c).

AMENDMENTS

1992—Par. (2). Pub. L. 102–484 inserted before semicolon at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4)(B). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 516(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section and section 1206 of this title] shall take effect with respect to disabilities incurred on or after November 14, 1986, but any benefits or services payable by reason of the applicability of those amendments during the period beginning on November 14, 1986, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CROSS REFERENCES

Grade on retirement for physical disability, see section 1372 of this title.

Members on temporary disability retired list, retirement under this section, see section 1210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1210, 1372, 1401, 1402, 1402a, 1406, 1407 of this title.

§ 1205. Members on active duty for 30 days or less: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 8, 1985, Pub. L. 99–145, title V, § 513(a)(1)(B), 99 Stat. 627; Nov. 14, 1986, Pub. L. 99–661, div. A, title VI, § 604(d)(2)[(B)], 100 Stat. 3876.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1205	37:272(c) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(c) (clause (5)), 63 Stat. 818.

The first 52 words are inserted for clarity and are based on the rule stated in section 1204 of this title, which restates that part of 37:272(c) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

AMENDMENTS

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CROSS REFERENCES

Grade on being placed on temporary disability retired list, see section 1372 of this title.

Temporary disability retired lists, see section 1376 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1372, 1376, 1401, 1402, 1402a, 1406, 1407 of this title.

§ 1206. Members on active duty for 30 days or less: separation

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and was the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 14, 1986, Pub. L. 99–661, div. A, title VI, § 604(d)(1), (3), 100 Stat. 3876; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602; Oct. 23, 1992, Pub. L. 102–484, div. A, title V, § 516(a), 106 Stat. 2407.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1206	37:272(c) (last proviso).	Oct. 12, 1949, ch. 681, § 402(c) (last proviso), 63 Stat. 818.

To state fully in the revised section the rule contained in 37:272(c) (last proviso), the provisions of 37:272(c) (less clause (5), and less 1st proviso), and 272(f) (as applicable to 272(c)), also contained in section 1204 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability''.

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1204 or 1205 of this title.

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

AMENDMENTS

1992—Par. (4). Pub. L. 102–484 inserted before period at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective with respect to disabilities incurred on or after Nov. 14, 1986, with any benefits or services payable by reason of applicability of that amendment during period beginning Nov. 14, 1986, and ending Oct. 23, 1992, subject to availability of appropriations, see section 516(b) of Pub. L. 102–484, set out as a note under section 1204 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CROSS REFERENCES

Members on temporary disability retired list, separation under this section, see section 1210 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1210, 1212 of this title.

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1207	37:278.	Oct. 12, 1949, ch. 681, § 408, 63 Stat. 823.

The words ''Each member * * * who'' are substituted for the words ''When a member * * * such member''. The words ''is determined to have'' are omitted as surplusage.

§ 1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 1333[1] of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Nov. 2, 1966, Pub. L. 89–718, § 8, 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96–513, title V, §§ 501(16), 511(42), 94 Stat. 2908, 2923; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1343(a)(6), 100 Stat. 3992; Apr. 21, 1987, Pub. L. 100–26, § 7(j)(3), 101 Stat. 283.)

[1] See References in Text note below.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1208(a)	37:282 (less clauses (2) and (3), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	Oct. 12, 1949, ch. 681, §412 (less clause (3), less applicability to persons referred to in §411, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps), 63 Stat. 824.
1208(b)	37:282 (clause (2), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	

In subsection (a), the words ''shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater'' are substituted for the words ''shall be interpreted to mean''.

In subsection (a)(1), the words ''he is considered to have'' are substituted for the words ''such member, former member, or person has or is deemed to have pursuant to law''.

In subsection (a)(2)(A), the words ''his active service'' are substituted for the words ''while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in—other provisions of law'' because of the definitions of ''active service'' and ''active duty'' in sections 101(24) and 101(22) of this title.

In subsection (a)(2)(C), the references to 10:22–23, 24–26, and 30–36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 32:70 is omitted as repealed by section 16 of the act of June 15, 1933, ch. 87, 48 Stat. 159. The reference to 10:23a is omitted as executed. The references to 10:38 and 32:66 and 172–175 are omitted as covered by the words ''active service''. The references to 32:144–147, 171, and 176 are omitted, since they deal with pay and do not authorize duty or training. The reference to section 502 of title 32, not contained in 37:282, is inserted, since section 92 of the National Defense Act, as amended (32:62) is referred to in section 412 of the Career Compensation Act of 1949 (37:282).

In subsection (b), the words ''any other member'' are substituted for the words ''members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)) to include members appointed, enlisted, or inducted without component.

REFERENCES IN TEXT

Section 1333 of this title, referred to in subsec. (b), was renumbered section 12733 of this title and amended generally by Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3002.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–26 substituted ''paragraph (1)'' and ''paragraph (2)'' for ''clause (1)'' and ''clause (2)'', respectively, in introductory provisions, and ''paragraph (2)'' for ''clause 2(B) of this subsection'' in second sentence.

1986—Subsec. (a)(2)(A). Pub. L. 99–661 struck out ''after February 2, 1901'' after ''a reserve nurse''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''separation, discharge, or retirement for length of service'' for ''separation or mandatory elimination from the active list'' in par. (1), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration'' in par. (2)(B), and, in provisions following par. (2)(C), substituted ''as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and'' for ''as a member of the Environmental Science Services Administration includes service as a member''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (2)(B) and inserted provision that, for purposes of clause (2)(B) of subsec. (a), active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(16) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(42) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

ADDITIONAL SERVICE CREDITABLE TO CERTAIN REGULARS

Section 39 of act Aug. 10, 1956, provided that: ''In addition to service with which he may be credited under section 1208(a)(2) of title 10, United States Code [subsec. (a)(2) of this section], a member of a regular component of the armed forces shall be credited, for the purposes of chapter 61 of title 10, United States Code [this chapter], with all service as—

''(1) a cadet at the United States Military Academy, if appointed before August 24, 1912;

''(2) a midshipman at the United States Naval Academy, if appointed before March 4, 1913;

''(3) an Army field clerk; and

''(4) a field clerk, Army Quartermaster Corps.''

OFFICERS OF THE PUBLIC HEALTH SERVICE

Applicability of subsec. (a)(2) of this section to officers of the Reserve Corps and to officers of the Regular Corps of the Public Health Service, see section 212 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1203, 1204, 1206, 1210, 1212, 1401, 1402, 1402a of this title; title 42 section 212.

§1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 1332[1] of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 1335[1] of this title and, if otherwise eligi-

[1] See References in Text note below.

ble, to receive retired pay under chapter 71 of this title upon becoming 60 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1209	37:272(g).	Oct. 12, 1949, ch. 681, § 402(g), 63 Stat. 820.

The words ''Notwithstanding the foregoing provisions of this section'', ''satisfactory Federal'', and ''and receiving disability severance pay'' are omitted as surplusage. The words ''at the time of the determination'' are substituted for the word ''current''. The word ''otherwise'' is substituted for the words ''in all other respects''.

REFERENCES IN TEXT

Sections 1332 and 1335 of this title, referred to in text, were renumbered sections 12732 and 12735 of this title, respectively, and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3000, 3003.

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

CROSS REFERENCES

Members on active duty for 30 days or less, see section 1206 of this title.

Regulars and members on active duty for more than 30 days, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1206 of this title.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—

(i) applies for and qualifies for that retirement or transfer; or

(ii) is required to be discharged, retired, or eliminated from an active status.

(2)(A) For the purpose of paragraph (1)(B), a member shall be considered qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve or is required to be discharged, retired, or eliminated from an active status if, were the member reappointed or reenlisted under section 1211 of this title, the member would in all other respects be qualified for or would be required to be retired, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, discharged, or eliminated from an active status under any other provision of law.

(B) The grade of a member retired, transferred, discharged, or eliminated from an active status pursuant to paragraph (1)(B) shall be determined under the provisions of law under which the member is retired, transferred, discharged, or eliminated. The member's retired, retainer, severance, readjustment, or separation pay shall be computed as if the member had been reappointed or reenlisted upon removal

from the temporary disability retired list and before the retirement, transfer, discharge, or elimination. Notwithstanding section 8301 of title 5, a member who is retired shall be entitled to retired pay effective on the day after the last day on which the member is entitled to disability retired pay.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Nov. 8, 1985, Pub. L. 99–145, title V, § 513(a)(2), 99 Stat. 627; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1210(a)	37:272(e) (less last sentence). 37:274(a). 37:274(b) (less 1st sentence).	Oct. 12, 1949, ch. 681, §§ 402(d) (30th through 55th words), (e) (less 1st proviso of last sentence), (f) (as applicable to § 402(e)), 404, 63 Stat. 818–821.
1210(b)	37:272(e) (1st 37 words of last proviso of last sentence).	
1210(c)	37:272(e) (last sentence, less provisos and less clause (2)). 37:272(e) (38th through 45th words of last proviso of last sentence).	
1210(d)	37:272(f) (as applicable to 37:272(e)).	
1210(e)	37:272(e) (clause (2) of last sentence). 37:272(e) (46th word of last proviso of last sentence).	
1210(f)	37:272(e) (47th through 56th words of last proviso of last sentence).	
1210(g)	37:274(b) (1st sentence).	
1210(h)	37:272(d) (30th through 55th words).	

In subsection (a), the second sentence is substituted for 37:274(a). The word ''resumed'' is substituted for the words ''reinstated at a later date'', in 37:274(b).

In subsection (b), the last sentence is inserted for clarity to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/8438, 30 Dec. 1953) and an opinion of the Judge Advocate General of the Navy (JAG: III: 7: WBM: bg. 7 Jan. 1954).

In subsection (c), the words ''or upon a final determination under subsection (b)'' are substituted for the words ''or upon the determination of a period of five years from the date of temporary disability retirement'', in 37:272(e). The words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(e). The words ''and he shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section'' are omitted as covered by sections 1201 and 1204 of this title. Reference to specific sections on permanent retirement are substituted for the word ''permanently'', before the word ''retired'', in 37:272(e).

In subsection (d), 37:272(f) (proviso) is omitted as surplusage.

In subsection (e), the words ''and if he has less than 20 years of service computed under section 1208 of this title'' are inserted to distinguish the separation requirement under this section from retirement requirements under subsection (d). 37:272(e) (last 19 words of clause (2) of last sentence) is omitted as covered by sections 1203 and 1206 of this title. The words ''at the time of determination'' are substituted for the word ''current''.

In subsection (f), the first 39 words are inserted for clarity.

In subsection (g), the words ''members in his retired grade traveling in connection with temporary duty'' are substituted for the words ''the rank, grade, or rating in which retired for temporary duty travel performed''. The words ''for travel performed'' are omitted as surplusage.

AMENDMENTS

1989—Subsecs. (c) to (e). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1985—Subsecs. (b) to (d). Pub. L. 99–145, § 513(a)(2)(A), inserted ''and stable'' after ''permanent nature''.

Subsec. (f). Pub. L. 99–145, § 513(a)(2)(B), designated existing provisions as par. (1), substituted ''or rating, the Secretary shall—'' for ''and rating, the Secretary shall treat him as provided in section 1211 of this title'', added subpars. (A) and (B), and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1211 of this title.

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active-duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service

in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W–1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W–2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master sergeant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Sept. 7, 1962, Pub. L. 87–651, title I, § 107(b), 76 Stat. 508; Dec. 12, 1980, Pub. L. 96–513, title V, § 501(17), 94 Stat. 2908; Nov. 8, 1985, Pub. L. 99–145, title V, § 513(a)(3), 99 Stat. 627.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1211(a)	37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)–(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a).	Oct. 12, 1949, ch. 681, §§ 405, 406, 407, 63 Stat. 821.
1211(b)	37:275(a). 37:275(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	37:275(c) (1st sentence).	
	37:276(a) (less clauses (1)–(3)).	
	37:276(a)(1) (1st 7 words).	
	37:276(a)(2) (1st 10 words).	
	37:276(a)(3) (1st 8 words).	
	37:277(a).	
1211(c)	37:276(a)(1) (less 1st 22 words).	
	37:276(a)(2) (11th through 18th words).	
	37:276(a)(3) (9th and 10th words).	
	37:276(b).	
1211(d)	37:276(a)(1) (8th through 22d words).	
	37:276(a)(2) (less 1st 18 words).	
	37:276(a)(3) (less 1st 10 words).	
1211(e)	37:275(c) (2d sentence).	
	37:277 (less (a)).	
1211(f)	37:275(c) (last sentence).	

In subsections (a) and (b), the words ''under section 1210(f) of this title'' are substituted for the words ''If, as a result of a periodic physical examination'', in 37:275(a) and (b), and 276(a), and the words ''and who are subsequently found to be physically fit'', in 37:277(a). The words ''subject to the provisions of section 277 of this title'', in 37:275(a), are omitted as surplusage.

In subsections (a)(2)–(6) and (b)(2)–(6), the appointment or enlistment is restricted to those already in an enlisted, warrant, or commissioned status, as the case may be, held by the member before placement of his name on the temporary disability retired list, since 37:277 (last sentence) indicates that appointment in the next higher grade for regular warrant officer is restricted to those warrant grades to which the President alone may appoint him. Similarly 37:275 (last 10 words) indicates that an enlisted member may only be reenlisted.

In subsection (a)(2) reference to the President, in 37:277(a), is omitted as inapplicable to the appointment of warrant officers of the Army and the Air Force.

Subsection (a)(5) is substituted for 37:275(b) (proviso) (as applicable to Army and Air Force).

Subsection (a)(6) is inserted, since the words ''reserve component'' are defined by section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (b)(2), the words ''by and with the advice and consent of the Senate'' are added to make it clear that all appointments to the grade of commissioned warrant officer in the Navy, Marine Corps, and Coast Guard require Senate confirmation. Although these words do not appear in section 405 of the Career Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d)(3) is made applicable to members without component status, since the words ''reserve component'' are defined in section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words ''rank'' and ''rating'' are omitted as surplusage.

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–145 inserted ''and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title,'' after ''proposed under subsection (a) or (b),'' and inserted ''and the member shall be discharged'' after ''as soon as practicable''.

1980—Subsec. (a)(1). Pub. L. 96–513 substituted ''active-duty list'' for ''active list of his regular component''.

1962—Subsec. (d). Pub. L. 87–651 substituted ''subsection (b)(1) or (2)'' for ''subsection (b)(1), (2), or (3)'' in cl. (1), and ''subsection (b)(4)'' for ''subsection (b)(5)'' in cl. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1210, 12009 of this title.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of Transportation, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination for promotion, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of

a year that is less than six months is disregarded.

(c) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs. However, no deduction may be made from any death compensation to which his dependents become entitled after his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(43), 94 Stat. 2924; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1212(a)	37:273 (less 1st and last provisos).	Oct. 12, 1949, ch. 681, § 403, 63 Stat. 820.
1212(b)	37:273 (1st proviso).	
1212(c)	37:273 (last proviso).	

In subsection (a), the words ''Upon separation'' are inserted for clarity. The words ''his years of service * * * computed under section 1208 of this title'' are substituted for the words ''a number of years equal to the number of years of active service to which such member is entitled under the provisions of section 282 of this title''. The words ''but not more than 12'' are substituted for the words ''but not to exceed a total of two years' basic pay'', to simplify the necessary calculation. The substituted words produce the same result. The word ''rating'' is omitted as covered by the words ''grade'' and ''rank''.

In clause (2)(A)–(D), the words ''Twice the amount of monthly'' are substituted for the words ''An amount equal to two months' ''. The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier'', since the member might be separated without ever being carried on the list. The word ''rating'' is omitted as surplusage.

In clause (2)(B), the words ''the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated'' are substituted for the words ''the Secretary concerned'' for clarity.

In clause (2)(C), the words ''regular or reserve'' are inserted, since they are the only ''permanent'' grades.

Clause (2)(D) is based on that part of the third proviso of 37:273 relating to promotions other than regular or reserve.

In subsection (b), the words ''and a part of a year that is less than six months is disregarded'' are inserted to reflect the legislative history of the rule (see Senate Hearings on H.R. 5007, 81st Cong., page 313). The words ''for himself or his dependents'' are omitted as surplusage.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Pension to persons serving ten years, see section 6160 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1206 of this title; title 38 section 1161.

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(44), 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1213	37:280.	Oct. 12, 1949, ch. 681, § 410, 63 Stat. 823.

The words ''a person who has received disability severance pay'' are substituted for the words ''Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay''. The words ''any payment * * * for'' are substituted for the words ''for any monetary obligation provided under any provision * * * on account of''. The words ''this section does not prohibit'' are substituted for the words ''shall not operate to bar''. The words ''the payment of money to * * * if the money was due him'' are substituted for the words ''from receiving or the service concerned from paying any moneys due and payable''. The words ''valid'', ''processed'', and ''pursuant to any provisions of law'' are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1214	37:283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, § 413 (less 1st 17 words), 63 Stat. 825.

The words ''including regulations'' are omitted as covered by section 1216(a) of this title.

§ 1215. Members other than Regulars: applicability of laws

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1215	37:272(i).	Oct. 12, 1949, ch. 681, § 402(i), 63 Stat. 820.

The words ''is retired, or to whom retired pay is granted'' are substituted for the words ''heretofore or hereafter retired or granted retirement pay''. The words ''any other member of the armed forces'' are substituted for the words ''all members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Mar. 4, 1976, Pub. L. 94–225, § 2(a), 90 Stat. 202; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(45), 94 Stat. 2924; Oct. 19, 1984, Pub. L. 98–525, title XIV, § 1405(25), 98 Stat. 2623; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1343(a)(7), 100 Stat. 3992; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1216(a)	37:283 (1st 17 words).	Oct. 12, 1949, ch. 681, §§ 413 (1st 17 words), 414, 63 Stat. 824, 825.
1216(b)	37:284(a).	
1216(c)	37:284 (less (a)).	

In subsection (b), the words ''of any member for reappointment, reenlistment'' are inserted for clarity, since they are implied in the words ''reentry into active service''.

In subsections (b) and (c), the words ''under this chapter'' are inserted for clarity.

In subsection (c), the words ''as prescribed by the President'' are substituted for the words ''under regulations promulgated by the President''.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1986—Subsec. (d). Pub. L. 99–661 substituted ''who is a general officer or flag officer or is a medical officer'' for ''who is in pay grade O–7 or higher or is a Medical Corps officer or medical officer of the Air Force'' in provisions preceding par. (1).

1984—Subsec. (b). Pub. L. 98–525 struck out ''of this section'' after ''subsection (d)'' in provisions preceding par. (1).

1980—Subsec. (d). Pub. L. 96–513 substituted ''Affairs'' for ''and Environment''.

1976—Subsec. (b). Pub. L. 94–225, § 2(a)(1), substituted ''Except as provided in subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsec. (d). Pub. L. 94–225, § 2(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(b) of Pub. L. 94–225 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act [Mar. 4, 1976] by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.''

EX. ORD. NO. 10122. REGULATIONS GOVERNING DISABILITY PAY, HOSPITALIZATION AND REEXAMINATION

Ex. Ord. No. 10122, Apr. 14, 1950, 15 F.R. 2173, as amended by Ex. Ord. 10400, Sept. 27, 1952, 17 F.R. 8648; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Ex. Ord. No. 11733, July 30, 1973, 38 F.R. 20431 provided:

By virtue of and pursuant to the authority vested in me by section 414(b) of the Career Compensation Act of 1949, approved October 12, 1949 (Public Law 351, 81st Congress [former section 284(b) of Title 37, now covered by subsecs. (b) and (c) of this section], and as President of the United States and Commander in Chief of the armed forces of the United States, I hereby prescribe the following regulations governing payment of disability retirement pay, hospitalization, and re-examination of members and former members of the uniformed services:

SECTION 1. The terms ''uniformed services'' and ''Secretary'' as used in these regulations shall have the meaning prescribed therefor by subsections (a) and (f), respectively, of section 102 of the Career Compensation Act of 1949 [section 101(3) and (5) of Title 37, Pay and Allowances of the Uniformed Services].

SEC. 2. (a) Effective as of October 1, 1949, all duties, powers, and functions incident to the payment of disability retirement pay of members or former members of the uniformed services retired for physical disability or receiving disability retirement pay shall, except as provided in subsection (b) of this section, be vested in the Secretary concerned.

(b) Effective July 1, 1950, all duties, powers, and functions exercised by the Veterans' Administration pursuant to Executive Order No. 8099 of April 28, 1939, as amended by Executive Order No. 8461 of June 28, 1940, relative to the administration of the retirement-pay provisions of section 1 of the act of August 30, 1935, as amended by section 5 of the act of April 3, 1939, 53 Stat. 557 [former section 369a of this title], and amendments thereof, shall, as to cases within their respective jurisdictions, be vested in the Secretary of the Army and the Secretary of the Air Force, and thereafter the Veterans' Administration shall not be charged in any case with any further responsibility in the administration of the said retirement-pay provisions. The said Executive Order No. 8099 as amended by the said Executive Order No. 8461 is hereby amended accordingly.

SEC. 3. All duties, powers, and functions incident to the hospitalization, except as provided in section 5 of this order, and re-examination of members of the uniformed services placed on the temporary disability retired list under the provisions of the Career Compensation Act of 1949 shall be vested in the Secretary concerned.

SEC. 4. Effective May 1, 1950, all duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services permanently retired for physical disability or receiving disability retirement pay shall, except as provided in section 5 of this order, be vested in the Secretary concerned: *Provided*, that all the duties, powers, and functions incident to hospitalization which such members or former members are entitled to and elect to receive in facilities of the Veterans' Administration, other than hospitals under the jurisdiction of the uniformed services, shall be vested in the Administrator of Veterans' Affairs.

SEC. 5. All duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services placed on the temporary disability retired list or permanently retired for physical disability or receiving disability retirement pay who require hospitalization for chronic diseases shall be vested in the Administrator of Veterans' Affairs: *Provided*, that all the duties, powers, and functions incident to hospitalization for such members or former members who elect to receive hospitalization in uniformed services facilities shall, subject to the availability of space and facilities and the capabilities of the medical and dental staff, be vested in the Secretary concerned: *And provided further*, that for the purpose of this order, the term ''chronic disease'' shall be construed to include arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative diseases of the nervous system, severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, and such other diseases as may be so defined jointly by the Secretary of Defense, the Administrator of Veterans' Affairs, and the Federal Security Administrator and so described in appropriate regulations of the respective departments and agencies concerned. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to the medical care of certain personnel of the Coast Guard, National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey), Public Health Service, and the former Lighthouse Service, is hereby amended to the extent necessary to conform to the provisions of this section.

SEC. 6. Except as provided in section 5 hereof with respect to hospitalization for chronic diseases, nothing in this order shall be construed to affect the duties, powers, and functions of the Public Health Service with respect to hospitalization and medical examination of members and former members of the Coast Guard and the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey) under the Public Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

SEC. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Administrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled ''An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War'' (45 Stat. 735, as amended) [section 581 of former Title 38], or by or pursuant to the act of September 26, 1941, entitled ''An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty'' (55 Stat. 733) [former section 456a of this title].

CROSS REFERENCES

Review of decisions of retiring boards and similar boards, see section 1554 of this title.

§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(7), 72 Stat. 1564.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1217	[No source].	[No source].

The revised section is inserted to reflect the limited definition of the word ''member'' in section 102(b) of the Career Compensation Act of 1949 (37 U.S.C. 231(b)).

1958 ACT

Aviation cadets were omitted from chapter 61 because Title IV of the Career Compensation Act of 1949 (for-

merly 37 U.S.C. 271 et seq.), which was the source law for this chapter, covered only members entitled to basic pay and it was believed that aviation cadets were not so entitled. However, the Comptroller General has ruled that aviation cadets are entitled to basic pay (30 Comp. Gen. 431). Accordingly, aviation cadets were covered by Title IV and should not be excepted from chapter 61.

AMENDMENTS

1958—Pub. L. 85–861 struck out provisions which made chapter inapplicable to aviation cadets.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 85–56, title XXII, §2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, §107(c), Sept. 7, 1962, 76 Stat. 508; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (4), Nov. 29, 1989, 103 Stat. 1602, 1603.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (c). Pub. L. 101–189, §1621(a)(4), substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

1962—Pub. L. 87–651 amended section generally, and among other changes, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in section catchline, and struck out provisions which prohibited a person from being discharged or released from active duty until his certificate of discharge or release from active duty and his final pay (or a substantial portion of his final pay) are ready for delivery to him or to his next of kin or legal representative.

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

§1219. Statement of origin of disease or injury: limitations

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid.

(Added Pub. L. 85–56, title XXII, §2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, §107(c), Sept. 7, 1962, 76 Stat. 509.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1962—Pub. L. 87–651 substituted ''Statement of origin of disease or injury: limitation'' for ''Statement against interest void'' in section catchline, and ''A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid'' for ''No person in the Armed Forces may be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have. Any such statement against his own interest, whenever signed, is of no force and effect.''

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

[§1220. Repealed. Pub. L. 87–651, title I, §107(d), Sept. 7, 1962, 76 Stat. 509]

Section, added Pub. L. 85–56, title XXII, §2201(31)(A), June 17, 1957, 71 Stat. 161, related to location of accredited representatives at military installations. See section 2679 of this title.

§1221. Effective date of retirement or placement of name on temporary disability retired list

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section.

(Added Pub. L. 85–861, §1(28)(B), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1221	5:47a(b).	Aug. 2, 1956, ch. 876, 70 Stat. 933.

Clause (2)(A) is omitted as unnecessary since the revised section applies to the armed forces, and the revised section is made applicable to the other uniformed services by sections 3 and 4 of the act enacting this revised section. Clause (2)(B) is omitted as covered by section 101(8) of this title and sections 3 and 4 of the act enacting this revised section.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a''.

CHAPTER 63—RETIREMENT FOR AGE

Sec.
1251. Age 62: regular commissioned officers; exceptions.
[1255. Repealed.]
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

AMENDMENTS

1980—Pub. L. 96–513, title V, § 501(18), Dec. 12, 1980, 94 Stat. 2908, added item 1251.

1967—Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374, struck out item 1255 ''Age 55: female regular warrant officers''.

§ 1251. Age 62: regular commissioned officers; exceptions

(a) Unless retired or separated earlier, each regular commissioned officer of the Army, Navy, Air Force, or Marine Corps (other than an officer who is a permanent professor, director of admissions, or registrar of the United States Military Academy or United States Air Force Academy or a commissioned warrant officer) shall be retired on the first day of the month following the month in which he becomes 62 years of age. An officer who is a permanent professor at the United States Military Academy or United States Air Force Academy, the director of admissions at the United States Military Academy, or the registrar of the United States Air Force Academy shall be retired on the first day of the month following the month in which he becomes 64 years of age.

(b) Notwithstanding subsection (a), the President may defer the retirement of an officer serving in a position that carries a grade above major general or rear admiral, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 64 years of age. Not more than ten deferments of retirement under this subsection may be in effect at any one time.

(c)(1) The Secretary concerned may defer the retirement under subsection (a) of a health professions officer if during the period of the deferment the officer will be performing duties consisting primarily of providing patient care or performing other clinical duties.

(2)(A) Except as provided in subparagraph (B), a deferment under this subsection may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(B) The Secretary concerned may extend a deferment under this subsection beyond the day referred to in subparagraph (A) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate.

(3) For purposes of this subsection, a health professions officer is—

(A) a medical officer;

(B) a dental officer; or

(C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse.

(Added Pub. L. 96–513, title I, § 111, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 100–180, div. A, title VII, § 719, Dec. 4, 1987, 101 Stat. 1115; Pub. L. 101–189, div. A, title VII, § 709, Nov. 29, 1989, 103 Stat. 1476.)

AMENDMENTS

1989—Subsec. (c)(2). Pub. L. 101–189 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), a deferment'' for ''A deferment'' and ''68 years of age'' for ''67 years of age'', and added subpar. (B).

1987—Subsec. (c). Pub. L. 100–180 added subsec. (c).

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DEFERRAL OF RETIREMENT DATE FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF

Pub. L. 100–456, div. A, title VII, § 704, Sept. 29, 1988, 102 Stat. 1996, provided that: ''Notwithstanding the limitation contained in the first sentence of subsection (b) of section 1251 of title 10, United States Code, the President may defer until October 1, 1989, the retirement of the officer serving as Chairman of the Joint Chiefs of Staff for the term which began on October 1, 1987.''

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provision that this section not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general, see section 632 of Pub. L. 96–615, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1406 of this title.

[§ 1255. Repealed. Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 100; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, covered the retirement of female permanent regular warrant officers with 20 years of active service upon attaining age 55.

§ 1263. Age 62: warrant officers

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 580 note), and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(Aug. 10, 1956 ch. 1041, 70A Stat. 101; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90–130, § 1(6), 81 Stat. 374; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(46), 94 Stat. 2924; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1052(17), 106 Stat. 2500.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1263(a)	10:600(d) (as applicable to 10:600*l*(b) (less (1)–(3))). 10:600*l*(b) (less (1)–(3)). 10:600r(c) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:135(d) (as applicable to 34:430(b) (less (1)–(3))). 34:430(b) (less (1)–(3)). 34:430c (as applicable to 34:430(b) (less (1)–(3))).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(b) (less (1)–(3))), 14(b) (less (1)–(3)), 14(e) (as applicable to (b) (less (1)–(3))), 21(c) (as applicable to 14(b) (less (1)–(3))), 68 Stat. 157, 162, 163, 168.
1263(b)	10:600*l*(e) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:430(e) (as applicable to 34:430(b) (less (1)–(3))).	

In subsection (a), the words ''has at least'' are substituted for the words ''has attained''. The words ''has at least'' are substituted for the words ''having completed not less than''. The words ''on that date which'' are omitted as surplusage. 10:600*l*(b) (15 words before (1)) and 34:430(b) (15 words before (1)) are omitted as covered by section 1275 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 substituted ''580 note'' for ''564 note''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 564 note)'' for ''311 of title 37''.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 1255 of this title.

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Computation of retired pay, see section 1401 of this title.

Suspension during war or emergency, see section 644 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1406 of this title; title 14 section 334.

§ 1275. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1275	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 65—RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

AMENDMENTS

1980—Pub. L. 96–513, title V, § 501(19), Dec. 12, 1980, 94 Stat. 2908, substituted ''RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE'' for ''RETIREMENT FOR LENGTH OF SERVICE'' as chapter heading.

§ 1293. Twenty years or more: warrant officers

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1293	10:600(d) (as applicable to 10:600*l*(a)). 10:600*l*(a). 34:135(d) (as applicable to 34:430(a)). 34:430(a).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 14(a)), 14(a), 68 Stat. 157, 162.

The words, ''The Secretary concerned may * * * retire'' are substituted for the words ''may * * * and in the discretion of the Secretary, be retired''. 10:600*l*(a) (last 14 words) and 34:430(a) (last 14 words) are omitted as covered by section 1315 of this title.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in text, is set out as a note under section 580 of this title.

AMENDMENTS

1962—Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TEMPORARY EARLY RETIREMENT AUTHORITY

Pub. L. 103–337, div. A, title V, § 542(d), Oct. 5, 1994, 108 Stat. 2769, provided that: ''Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and to the same extent as that provision applies to the Department of Defense. The Secretary of Transportation shall implement the provisions of that section with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel.''

Pub. L. 102–484, div. D, title XLIV, § 4403, Oct. 23, 1992, 106 Stat. 2702, as amended by Pub. L. 103–160, div. A,

title V, §561(a), Nov. 30, 1993, 107 Stat. 1667, provided that:

''(a) PURPOSE.—The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces through 1995.

''(b) RETIREMENT FOR 15 TO 20 YEARS OF SERVICE.—(1) During the active force drawdown period, the Secretary of the Army may—

''(A) apply the provisions of section 3911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 3914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(2) During the active force drawdown period, the Secretary of the Navy may—

''(A) apply the provisions of section 6323 of title 10, United States Code, to an officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 6330 of such title to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting '15 or more years' for '20 or more years' in the first sentence of subsection (a)[(b)], in the case of an enlisted member of the Navy, and in the second sentence of subsection (b), in the case of an enlisted member of the Marine Corps; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(3) During the active force drawdown period, the Secretary of the Air Force may—

''(A) apply the provisions of section 8911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section; and

''(B) apply the provisions of section 8914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'.

''(c) ADDITIONAL ELIGIBILITY REQUIREMENT.—In order to be eligible for retirement by reason of the authority provided in subsection (b), a member of the Armed Forces shall—

''(1) register on the registry maintained under section 1143a(b) of title 10, United States Code (as added by section 4462(a)); and

''(2) receive information regarding public and community service job opportunities from the Secretary of Defense or another source approved by the Secretary and be afforded, on request, counseling on such job opportunities.

''(d) REGULATIONS.—The Secretary of each military department may prescribe regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to this section and for the approval of applications for such retirement. Such criteria may include factors such as grade, years of service, and skill.

''(e) COMPUTATION OF RETIRED PAY.—Retired or retainer pay of a member retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) under a provision of title 10, United States Code, by reason of eligibility pursuant to subsection (b) shall be reduced by 1/12th of 1 percent for each full month by which the number of months of active service of the member are less than 240 as of the date of the member's retirement (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve).

''(f) FUNDING.—(1) Notwithstanding section 1463 of title 10, United States Code, and subject to the availability of appropriations for this purpose, the Secretary of each military department shall provide in accordance with this section for the payment of retired pay payable during the fiscal years covered by the other provisions of this subsection to members of the Armed Forces under the jurisdiction of that Secretary who are being retired under the authority of this section.

''(2) In each fiscal year in which the Secretary of a military department retires a member of the Armed Forces under the authority of this section, the Secretary shall credit to a subaccount (which the Secretary shall establish) within the appropriation account for that fiscal year for pay and allowances of active duty members of the Armed Forces under the jurisdiction of that Secretary such amount as is necessary to pay the retired pay payable to such member for the entire initial period (determined under paragraph (3)) of the entitlement of that member to receive retired pay.

''(3) The initial period applicable under paragraph (2) in the case of a retired member referred to in that paragraph is the number of years (and any fraction of a year) that is equal to the difference between 20 years and the number of years (and any fraction of a year) of service that were completed by the member (as computed under the provision of law used for determining the member's years of service for eligibility to retirement) before being retired under the authority of this section.

''(4) The Secretary shall pay the member's retired pay for such initial period out of amounts credited to the subaccount under paragraph (2). The amounts so credited with respect to that member shall remain available for payment for that period.

''(5) For purposes of this subsection—

''(A) the transfer of an enlisted member of the Navy or Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve shall be treated as a retirement; and

''(B) the term 'retired pay' shall be treated as including retainer pay.

''(g) COORDINATION WITH OTHER SEPARATION PROVISIONS.—(1) A member of the Armed Forces retired under the authority of this section is not entitled to benefits under section 1174, 1174a, or 1175 of title 10, United States Code.

''(2) [Amended section 638a(b)(4)(C) of this title.]

''(h) MEMBERS RECEIVING SSB OR VSI.—The Secretary of a military department may retire (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve) pursuant to the authority provided by this section a member of a reserve component who before the date of the enactment of this Act [Oct. 23, 1992] was separated from active duty pursuant to an agreement entered into under section 1174a or 1175 of title 10, United States Code. The retired or retainer pay of any such member so retired (or transferred) by reason of the authority provided in this section shall be reduced by the amount of any payment to such member before the date of such retirement under the provisions of such agreement under section 1174a or 1175 of title 10, United States Code.

''(i) ACTIVE FORCE DRAWDOWN PERIOD.—For purposes of this section, the active force drawdown period is the period beginning on the date of the enactment of this Act and ending on October 1, 1999.''

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Computation of retired pay, see section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 688, 1401, 1406 of this title; title 14 section 334.

§1305. Thirty years or more: regular warrant officers

(a)(1) Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5) who has at least 30 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after he completes that service, except as provided by section 8301 of title 5.

(2)(A) A regular Army warrant officer in the grade of chief warrant officer, W–5, who has at least 30 years of active service as a warrant officer that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), shall be retired 60 days after the date on which he completes that service, except as provided by section 8301 of title 5.

(B) A regular Army warrant officer in a warrant officer grade below the grade of chief warrant officer, W–5, who completes 24 years of active service as a warrant officer before he is required to be retired under paragraph (1) shall be retired 60 days after the date on which he completes 24 years of active service as a warrant officer, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Sept. 7, 1962, Pub. L. 87–649, §6(f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115; Dec. 5, 1991, Pub. L. 102–190, div. A, title XI, §1116, 105 Stat. 1503.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1305(a)	10:600(d) (as applicable to 10:600*l*(b)(2)). 10:600*l*(b)(2) (last sentence). 10:600r(c) (as applicable to 10:600*l*(b)(2)). 34:135(d) (as applicable to 34:430(b)(2)). 34:430(b)(2) (last sentence). 34:430c (as applicable to 34:430(b)(2)).	May 29, 1954, ch. 249, §§2(d) (as applicable to §14(b)(2)), 14(b)(2), (e) (as applicable to (b)(2)), 21(c) (as applicable to §14(b)(2)), 68 Stat. 157, 163, 168.
1305(b)	10:600*l*(e) (as applicable to 10:600*l*(b)(2)). 34:430(e) (as applicable to 34:430(b)(2)).	
1305(c)	10:600*l*(b)(2) (less last sentence). 34:430(b)(2) (less last sentence).	

In subsection (a), the words ''has at least'' are substituted for the words ''has completed''. The words ''and is not so continued on active service'' and ''on that date which'' are omitted as surplusage. 10:600*l*(b)(2) (last 16 words of last sentence) and 34:430(b)(2) (last 16 words of last sentence) are omitted as covered by section 1315 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

In subsection (c), the words ''the Secretary concerned may defer the retirement'' are substituted for the words ''in the discretion of the Secretary * * * be continued on active service''. The words ''but not later than'' are substituted for the words ''but not beyond that date which is''.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is set out as a note under section 580 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5)'' for ''A permanent regular warrant officer'', and added par. (2).

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CROSS REFERENCES

Coast Guard warrant officers, retirement in cases where higher grade has been held, see section 334 of Title 14, Coast Guard.

Computation of retired pay, see section 1401 of this title.

Retirement of warrant officers for age, see section 1263 of this title.

Suspension during war or emergency, see section 644 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1263, 1401, 1406 of this title; title 14 section 334.

§1315. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1315	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 67—RETIRED PAY FOR NONREGULAR SERVICE

Sec.
1331. Reference to chapter 1223.

PRIOR PROVISIONS

A prior chapter 67 was transferred to part II of subtitle E of this title and renumbered chapter 1223.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 section 2402.

§ 1331. Reference to chapter 1223

Provisions of law relating to retired pay for nonregular service are set forth in chapter 1223 of this title (beginning with section 12731).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(j)(7), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Prior sections 1331 to 1338 were renumbered sections 12731 to 12738 of this title, respectively.

CHAPTER 69—RETIRED GRADE

Sec.
1370. Commissioned officers: general rule; exceptions.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
[1374. Repealed.]
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Temporary disability retired lists.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(11), Oct. 5, 1994, 108 Stat. 3013, struck out item 1374 ''Reserve commissioned officers: grade on retirement or transfer to Retired Reserve'' and substituted ''Temporary disability retired lists'' for ''Retired lists'' in item 1376.

1980—Pub. L. 96–513, title V, § 501(20), Dec. 12, 1980, 94 Stat. 2908, added item 1370.

1958—Pub. L. 85–861, § 1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a; title 42 section 213a.

§ 1370. Commissioned officers: general rule; exceptions

(a)(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander and below lieutenant general or vice admiral, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the nine-year period beginning on October 1, 1990.

(B) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(C) The number of officers in an armed force in a grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) Upon retirement an officer of the Army, Navy, Air Force, or Marine Corps who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of general or admiral or lieutenant general or vice admiral under section 601 of this title may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him while serving on active duty.

(d)(1) Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade, under some other provision of law, a person who is entitled to retired pay under chapter 1225 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary concerned in accordance with this subsection.

(2)(A) In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(B) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander and below lieutenant general or vice admiral, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years. A person covered by the preceding sentence who has completed at least six months of satisfactory service in grade and is transferred from an active status or discharged as a reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service may be credited with satisfactory service in the grade in which serving at the time of such transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade.

(3) A person whose length of service in the highest grade held does not meet the service in grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(Added Pub. L. 96–513, title I, § 112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101–510, div. A, title V, § 522, Nov. 5, 1990, 104 Stat. 1561; Pub. L. 103–160, div. A, title V, § 561(d), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103–337, div. A, title XVI, §§ 1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 1671(c)(7)(B), substituted ''chapter 1223'' for ''chapter 67''.

Subsec. (d). Pub. L. 103–337, § 1641, added subsec. (d).

1993—Subsec. (a)(2)(A). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1990—Subsec. (a)(2). Pub. L. 101–510 inserted ''(A)'' after ''(2)'', inserted before period at end of first sentence '', except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the five-year period beginning on October 1, 1990'', designated second and third sentences as subpar. (B), substituted ''subparagraph (A)'' for ''the preceding sentence'', and added subpar. (C).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(B) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1641 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to the time-in-grade requirement for voluntary retirement of officers not subsequently promoted, see section 629 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 3961, 6151, 6323, 6325, 6383, 8961, 12771 of this title; title 33 section 857a; title 42 section 213a.

§ 1371. Warrant officers: general rule

Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1371	10:600*l*(d) (1st sentence). 10:600*l*(f) (1st sentence, as applicable to retired grade). 34:430(d) (1st sentence). 34:430(f) (1st sentence, as applicable to retired grade).	May 29, 1954, ch. 249, § 14(d) (1st sentence), (f) (1st sentence, as applicable to retired grade), 68 Stat. 163, 164.

The first 13 words are substituted for 10:600*l*(f) (1st sentence, as applicable to retired grade) and 34:430 (1st sentence, as applicable to retired grade). The words ''for a period of more than 30 days'' are substituted for the words ''under * * * orders specifying that the period of such duty shall be for a period in excess of thirty days or for an indefinite period'', to conform to the definition of those words in section 101(23) of this title. The words ''any full time duty'' are omitted, since the duty specified would necessarily be full time duty. The words ''under this section'' and ''competent'' are omitted as surplusage.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to Coast and Geodetic Survey [now commissioned officer corps of National Oceanic and Atmospheric Administration], by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

§ 1372. Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined

by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of his physical examination for promotion.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of his physical examination for promotion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1372	37:272(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos). 37:279 (less applicability to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos), 409 (less applicability to § 402(d) (last proviso)), 63 Stat. 818, 823.

Clause (1) is substituted for 37:272(d) (104th through 128th words, as applicable to retired grade). The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier''.

CROSS REFERENCES

Computation of retired pay, see section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402(d) or 1402a(d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(b)(3)(C), 94 Stat. 1104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1373	37:272(d) (last proviso, as applicable to retired grade). 37:279 (as applicable to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§ 402(d) (last proviso, as applicable to retired grade), 409 (as applicable to § 402(d) (last proviso)), 63 Stat. 819, 823.

The applicability of the rule stated in 37:279 to all members whose retired pay is computed under 37:272(d) (last proviso) is based on an opinion of the Judge Advocate General of the Army (JAGA 1953/3305, 24 Apr. 1953).

AMENDMENTS

1980—Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

[§ 1374. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

Section, added Pub. L. 85–861, § 1(29), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 86–559, § 1(4), June 30, 1960, 74 Stat. 265; Pub. L. 99–661, div. A, title V, § 508(d)(2), Nov. 14, 1986, 100 Stat. 3867, related to reserve commissioned officers' grade on retirement or transfer to Retired Reserve. See sections 12771 to 12773 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1375. Entitlement to commission: commissioned officers advanced on retired list

A commissioned officer of the Army, Navy, Air Force, or Marine Corps who is advanced on a retired list is entitled to a commission in the grade to which he is advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1375	10:1014. 34:394.	Mar. 4, 1911, ch. 266, 36 Stat. 1354.

The words ''has been or shall hereafter'', ''by operation of or in accordance with law'', and ''and shall receive'' are omitted as surplusage. The words ''in the grade to which he is advanced'' are substituted for the words ''in accordance with such advanced rank''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 42 section 213a.

§ 1376. Temporary disability retired lists

The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Sept. 2, 1958, Pub. L. 85–861, § 1(31), 72 Stat. 1451; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, § 1662(k)(3), 108 Stat. 3006.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376(a)	50:927(a) (less 1st 11 words). 50:927(b) (less last 7 words of 1st sentence).	Oct. 12, 1949, ch. 681, § 401 (less (a)), 63 Stat. 816.
1376(b).	37:271 (less (a)).	July 9, 1952, ch. 608, § 207(a) (less 1st 11 words), (b) (less last 7 words of 1st sentence), 66 Stat. 483.

In subsection (a), the word ''maintained'' is substituted for the word ''established'', and in subsection (b), the word ''maintain'' is substituted for the word ''established'', since the lists have been established and are published annually.

In subsection (a), the words ''who are in the Retired Reserve'' are substituted for 50:927(a) (last 11 words), since section 271 of this title prescribes the conditions for being placed in the Retired Reserve. 50:927(b) (last sentence) is omitted, since the revised section provides that both lists be maintained.

In subsection (b), the words ''containing the names placed thereon under section 1202 or 1205 of this title''

are substituted for the words ''upon which shall be placed the names of all members of his service entitled to such placement pursuant to the provisions of this subchapter''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376	[Uncodified].	July 24, 1956, ch. 677, §2 (less clauses (a)–(i), as applicable to 10:1376), 70 Stat. 623.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Temporary disability retired lists'' for ''Retired lists'' as section catchline, struck out ''(b)'' before ''The Secretary concerned'', and struck out subsec. (a) which read as follows: ''Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve.'' See section 12774 of this title.

1958—Subsec. (b). Pub. L. 85–861 struck out provisions requiring publication of the temporary disability retired list annually in the official register or other official publication of the armed force concerned.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431 of this title; title 33 section 857a; title 42 section 213a.

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.
1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980.
1403. Disability retired pay: treatment under Internal Revenue Code of 1986.
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Retired pay base for members who first became members before September 8, 1980: final basic pay.
1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average.
1408. Payment of retired or retainer pay in compliance with court orders.
1409. Retired pay multiplier.
1410. Restoral of full retirement amount at age 62 for members entering on or after August 1, 1986.
1411. Rules of construction.
1412. Rounding to next lower dollar.

AMENDMENTS

1987—Pub. L. 100–26, §7(h)(2)(B), Apr. 21, 1987, 101 Stat. 282, substituted colon for semicolon and ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in item 1403.

1986—Pub. L. 99–348, title III, §304(b)(2), July 1, 1986, 100 Stat. 703, inserted ''of members who first became members before September 8, 1980'' in item 1402, substituted ''Retired pay base for members who first became members before September 8, 1980: final basic pay'' for ''Limitations on revocation of retired pay'' in item 1406 and ''Retired pay base for members who first became members after September 7, 1980: high-36 month average'' for ''Retired pay base'' in item 1407, and added items 1409 to 1412.

1982—Pub. L. 97–252, title X, §1002(b), Sept. 8, 1982, 96 Stat. 735, added item 1408.

1980—Pub. L. 96–513, title V, §511(51)(C), (52)(C), Dec. 12, 1980, 94 Stat. 2924, 2925, substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in item 1402a, and substituted ''Internal Revenue Code of 1954'' for ''title 26'' in item 1403.

Pub. L. 96–342, title VIII, §813(a)(2), (b)(3)(B), 94 Stat. 1101, 1104, added items 1402a and 1407.

1966—Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115, substituted ''8301'' for ''47a'' in item 1404.

Pub. L. 89–652, §2(2), Oct. 14, 1966, 80 Stat. 902, added item 1406.

1963—Pub. L. 88–132, §5(g)(2), Oct. 2, 1963, 77 Stat. 214, added item 1401a.

1958—Pub. L. 85–422, §11(a)(1)(B), May 20, 1958, 72 Stat. 131, added item 1405.

CROSS REFERENCES

Length of service retirement, computation of retired pay, see section 1315 of this title.

Physical disability retirement or separation, computation of retired pay, see section 1275 of this title.

Transfer to inactive status list instead of separation, see section 1209 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 642, 1209, 1275, 1315 of this title; title 33 section 857a; title 42 section 213a.

§1401. Computation of retired pay

(a) DISABILITY, NON-REGULAR SERVICE, WARRANT OFFICER, AND DOPMA RETIREMENT.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed ''For sections'', retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability on date when retired.		Excess over 75% of retired pay base upon which computation is based.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.	Excess over 75% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.		
5	633 634 635 636 1251	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.		

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; May 20, 1958, Pub. L. 85–422, §§ 6(7), 11(a)(2), 72 Stat. 129, 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(1), 77 Stat. 214; Aug. 21, 1965, Pub. L. 89–132, § 6, 79 Stat. 547; Dec. 16, 1967, Pub. L. 90–207, § 3(1), 81 Stat. 653; Oct. 2, 1972, Pub. L. 92–455, § 1, 86 Stat. 761; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(b)(1), 94 Stat. 1102; Dec. 12, 1980, Pub. L. 96–513, title I, § 113(a), title V, § 511(49), 94 Stat. 2876, 2924; Sept. 24, 1983, Pub. L. 98–94, title IX, §§ 922(a)(1), 923(a)(1), (2)(A), 97 Stat. 641, 642; Oct. 30, 1984, Pub. L. 98–557, § 35(b), 98 Stat. 2877; July 1, 1986, Pub. L. 99–348, title II, § 201(a), 100 Stat. 691; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1052(18), 106 Stat. 2500; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, § 1662(j)(2), 108 Stat. 3004.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1401Introductory clause.	10:600*l*(f) (1st sentence, less applicability to retired grade).	June 29, 1948, ch. 708, § 303 (1st 91 words and 1st proviso), 62 Stat. 1088.
1401(1).	34:430(f) (1st sentence, less applicability to retired grade). 37:272(d) (less 1st 55 words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th, and last provisos). 37:272(e) (1st proviso of last sentence).	Oct. 12, 1949, ch. 681, §§ 402(d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402(e) (1st proviso of last sentence), 63 Stat. 818, 819.
1401(2)	37:272(d) (1st 29, and 51st through 55th, words, and 4th proviso).	May 29, 1954, ch. 249, § 14(d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401(3).	10:1036b (1st 91 words and 1st proviso). 34:440j (1st 91 words and 1st proviso).	
1401(4)	10:600*l*(d) (2d sentence). 10:600*l*(f) (last sentence). 34:430(d) (2d sentence). 34:430(f) (last sentence).	
1401, footnote 1.	[No source].	
1401, footnote 2.	[No source].	
1401, footnote 3.	37:272(d) (1st proviso); 10:600*l*(d) (less 1st and 2d sentences). 34:430(d) (less 1st and 2d sentences).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words ''whichever is earlier'', in 37:272(d) (clause (2)), are omitted, since they are contrary to the rule stated in 37:272(e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words ''basic pay'' are substituted for the words ''base and longevity pay'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words ''which he would receive if serving, at the time granted such pay, on active duty'' are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words ''at any time'' are substituted for the words ''during his entire period of service''.

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words ''at rates applicable on date of retirement * * * and adjust to reflect later changes in permanent rates'', in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words ''and disregard a part of a year that is less than six months'' are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 in table struck out formula number 3 which provided formula for computing retired pay under former section 1331 of this title.

1992—Subsec. (a). Pub. L. 102–484 substituted ''580'' for ''564'' in column in table under heading ''For sections''.

1986—Subsec. (a). Pub. L. 99–348, § 201(a)(1), (2), designated existing provision as subsec. (a), added heading,

and struck out third, fourth, and fifth sentences which read as follows: ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.''

Pub. L. 99–348, §201(a)(3), amended column 1 of table generally by substituting provisions that retired pay be computed by taking the retired pay base as computed under section 1406(b) or 1407 of this title for provisions that retired pay be computed for a person who first became a member of a uniformed service, as defined in section 1407(a)(2) of this title, after Sept. 7, 1980, by taking the monthly retired pay base as computed under section 1407(b) of this title, and for all others, by taking the monthly basic pay to which the member was entitled under various circumstances.

Pub. L. 99–348, §201(a)(4), substituted in column 2 of table a multiplier of the retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405 for a multiplier of 2½% of years of service credited under section 1405 for formulas 4 and 5 and struck out ''Excess over 75% of pay upon which computation is based.'' in column 4 of table for formulas 4 and 5.

Pub. L. 99–348, §201(a)(5), in columns 3 and 4 substituted ''retired pay base'' for ''pay'' wherever appearing.

Pub. L. 99–348, §201(a)(6), redesignated footnote 3 as 1, and struck out former footnote 1 which provided computation at rates applicable on date of retirement or date when the member's name was placed on temporary disability retired list, as the case may be, footnote 2 which provided computation at rates applicable on the date when retired pay is granted, footnote 4 which provided computation at the highest rates of basic pay applicable to an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, while so serving in that office and computation at the highest rate of basic pay applicable to an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, while he served if that rate is higher than the rate authorized by the table, and footnote 5 which provided for purposes of this section that an officer's retired grade be determined as if sections 3962(b) and 8962(b) did not apply.

Pub. L. 99–348, §201(a)(7), in column 2 of table substituted footnote 1 designation for footnote 3 designation wherever appearing.

Subsec. (b). Pub. L. 99–348, §201(a)(8), added subsec. (b).

1984—Pub. L. 98–557 inserted reference to Commandant of the Coast Guard in footnote 4 of table.

1983—Pub. L. 98–94, §922(a)(1), inserted ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Pub. L. 98–94, §923(a)(1), (2)(A), in footnote 3 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, §113(a), inserted formula 5 in table of formulae set out in the section and added footnote 5.

Pub. L. 96–513, §511(49), in formula 4 table of sections struck out reference to section 1255, in heading for Column 1 substituted reference to Sept. 7, 1980, for reference to date of enactment of Department of Defense Authorization Act, 1981, and in footnote 4 substituted reference to master chief petty officer of the Navy, for reference to senior enlisted advisor of the Navy.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

1972—Pub. L. 92–455 substituted in second sentence of footnote 4 of table ''chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard,'' for ''chief master sergeant of the Air Force, or sergeant major of the Marine Corps,''.

1967—Pub. L. 90–207 inserted sentence to footnote 4 of table requiring the computation of retired pay for an enlisted person who has served as senior noncommissioned officer of his service at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

1965—Pub. L. 89–132 struck out ''increased, for members credited with two or less years of service for basic pay purposes, by 6%'' from column 1 of formula 1 and column 1 of formula 2.

1963—Pub. L. 88–132 struck out from footnote 1 of table '', and adjust to reflect later changes in applicable permanent rates'' after ''as the case may be.''

1958—Pub. L. 85–422, §6(7)(A), inserted provisions in Column 1 of formulas 1 and 2 permitting the taking of the monthly basic pay to which a member was entitled on the day before retirement or placement on temporary disability retired list, increased, for members credited with two or less years of service for basic pay purposes, by 6 percent.

Pub. L. 85–422, §11(a)(2), substituted ''under section 1405 of this title'' for ''in computing basic pay'' in column 2 of formula 4.

Pub. L. 85–422, §6(7)(B), added footnote 4.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 35(c) of Pub. L. 98–557 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984''.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 922(e) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting section 6333 of this title and amending this section, sections 1401a, 1402, 1402a, 1437, 1451, 3991, 3992, 6151, 6383, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983.''

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 113(a) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(49) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

SHORT TITLE OF 1986 AMENDMENT

Section 1(a) of Pub. L. 99–348 provided that: ''This Act [enacting sections 134a, 1406, 1407, and 1409 to 1412 of this title, redesignating former section 1406 of this title as section 1338 [now 12738] of this title, amending this section, sections 101, 135, 136a, 716, 1040, 1338 [now 12738], 1401a, 1402, 1402a, 1405, 1447, 1451, 1452, 2830, 3925, 3991, 3992, 5083, 5201, 6151, 6322, 6323, 6325, 6326, 6330, 6333, 6383, 8925, 8991, and 8992 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, sections 46, 47, 51, 288, 291 to 293, 327, 334, 353 to 355, 357, 362, and 421 to 424 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and sections 211 and 212 of Title 42, The Public Health and Welfare, repealing former section 1407 and section 6328 of this title, enacting provisions set out as notes under this section and sections 135 and 12731 of this title, and repealing provisions set out as notes under this section and section 6330 of this title] may be cited as the 'Military Retirement Reform Act of 1986'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–252, title X, § 1001, Sept. 8, 1982, 96 Stat. 730, provided that: ''This title [enacting section 1408 of this title, amending sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title, and enacting provisions set out as notes under sections 1408 and 2208 of this title] may be cited as the 'Uniformed Services Former Spouses' Protection Act'.''

SIX-MONTH ROUNDING RULE

Section 305(b) of Pub. L. 99–348 provided that:

''(1) GENERAL RULE.—Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

''(2) EXCEPTIONS.—The limitation in paragraph (1) does not apply to a member who before January 1, 1982—

''(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

''(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code, or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title; or

''(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 [now 1223] of such title, but for the fact that the person was under 60 years of age.

''(3) DEFINITION OF COVERED MEMBER.—For the purposes of this subsection, the term 'covered member of the Armed Forces' means a member of the Armed Forces who became entitled to retired or retainer pay during the period beginning on January 1, 1982, and ending on September 30, 1983.

''(4) REPEAL OF SOURCE LAW.—Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473) [formerly set out as a note below], is repealed.

''(5) CROSS REFERENCE.—For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 (and prior provisions of law), see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98–94) [probably means section 923(g) of Pub. L. 98–94, set out as an Effective Date of 1983 Amendment note under section 1174 of this title].''

LIMITATION ON PAYMENT OF RETIRED OR RETAINER PAY TO REFLECT FRACTIONAL YEAR ADJUSTMENTS

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8054], Oct. 12, 1984, 98 Stat. 1904, 1933, which prohibited, with certain exceptions, payment of retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, became entitled to retired or retainer pay, in an amount greater than the amount otherwise determined payable after reductions necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for part of a year of service to permit credit for a part of a year of service only for such month or months actually served, was repealed by Pub. L. 99–348, title III, § 305(b)(4), July 1, 1986, 100 Stat. 705.

INCREASE IN PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 5 of Pub. L. 90–207 provided that: ''Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED OR RETAINER PAY OF MEMBERS ENTITLED THERETO ON OR AFTER OCTOBER 1, 1967

Section 6 of Pub. L. 90–207 provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [amending section 203(a) of Title 37].''

INCREASES IN RETIRED OR RETAINER PAY

Pub. L. 89–501, title III, § 303, July 13, 1966, 80 Stat. 278, provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending section 203(a) of Title 37].''

Effective date of section 303 of Pub. L. 89–501 as the first day of the first pay period which begins on or after July 1, 1966, see section 304 of Pub. L. 89–501, set out as Effective Date of 1966 Amendments note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Section 5(a) of Pub. L. 89–132 provided that: ''The retired pay or retainer pay of a member or former member of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the

effective date of this Act [Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act has increased over the average monthly index for calendar year 1962.''

CONTINUATION OF PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 7 of Pub. L. 89–132 provided that: ''Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED PAY TO PERSONS RETIRED BEFORE JUNE 1, 1958

Section 4 of Pub. L. 85–422, as amended by Pub. L. 85–855, §1(a), Aug. 28, 1958, 72 Stat. 1104, provided that:

''(a) Except for members covered by section 7 of this Act, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

''(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

''(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [June 1, 1958]''.

Section 1(b) of Pub. L. 85–855 provided that the amendment of section 4(a) of Pub. L. 85–422, which eliminated the words ''and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list'' preceding ''members and former members'' should be effective June 1, 1958.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

CROSS REFERENCES

Computation of years of service for purposes of formula 4, see section 1405 of this title.

Injury causing disability, computation of retired pay, see section 1204 of this title.

Permanence of temporary disability, see section 1210 of this title.

Reduction in retired pay, see section 5532 of Title 5, Government Organization and Employees.

Retired pay for nonregular service, see section 12731 et seq. of this title.

Retirement of warrant officers upon second failure of promotion, see section 580 of this title.

Retirement or separation for physical disability, see section 1201 et seq. of this title.

Temporary disability, computation of retired pay, see sections 1202 and 1205 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 1201, 1202, 1204, 1205, 1210, 1403, 3991, 8991 of this title; title 5 section 5532; title 33 section 857a; title 42 section 213a.

§1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) PROHIBITION ON RECOMPUTATION TO REFLECT INCREASES IN BASIC PAY.—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) COST-OF-LIVING ADJUSTMENTS BASED ON CPI INCREASES.—

(1) IN GENERAL.—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) PRE-AUGUST 1, 1986 MEMBERS.—

(A) GENERAL RULE.—The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(i) the price index for the base quarter of that year, exceeds

(ii) the base index.

(B) SPECIAL RULES FOR FISCAL YEARS 1994 THROUGH 1998.—

(i) FISCAL YEAR 1994.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

(ii) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.

(3) POST-AUGUST 1, 1986 MEMBERS.—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, by the difference between—

(A) the percent determined under paragraph (2); and

(B) 1 percent.

(4) SPECIAL RULE FOR PARAGRAPH (3).—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) REGULATIONS.—Any increase in retired pay under this subsection shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(d) RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(1) the base index, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(e) PRO RATING OF INITIAL ADJUSTMENT.—Notwithstanding subsection (b), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after August 1, 1986, shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) PREVENTION OF PAY INVERSIONS.—Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(g) DEFINITIONS.—In this section:

(1) The term ''price index'' means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term ''base quarter'' means the calendar quarter ending on September 30 of each year.

(3) The term ''base index'' means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term ''retired pay'' includes retainer pay.

(h) PRICE INDEX FOR A QUARTER.—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(Added Pub. L. 88–132, § 5(g)(1), Oct. 2, 1963, 77 Stat. 213; amended Pub. L. 89–132, § 5(b), Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, § 2(a)(1), Dec. 16, 1967, 81 Stat. 652; Pub. L. 91–179, § 1, Dec. 30, 1969, 83 Stat. 837; Pub. L. 94–106, title VIII, § 806, Oct. 7, 1975, 89 Stat. 538; Pub. L. 94–361, title VIII, § 801(a), July 14, 1976, 90 Stat. 929; Pub. L. 94–440, title XIII, § 1306(d)(1), Oct. 1, 1976, 90 Stat. 1462;

Pub. L. 96–342, title VIII, § 812(b)(1), Sept. 8, 1980, 94 Stat. 1098; Pub. L. 98–94, title IX, §§ 921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub. L. 98–525, title XIV, § 1405(26), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–348, title I, § 102, July 1, 1986, 100 Stat. 683; Pub. L. 100–180, div. A, title XII, § 1231(21), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–224, § 1, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 100–456, div. A, title VI, § 622(a), Sept. 29, 1988, 102 Stat. 1983; Pub. L. 101–189, div. A, title VI, § 651(b)(1), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–66, title II, § 2001, Aug. 10, 1993, 107 Stat. 335; Pub. L. 103–160, div. A, title XI, § 1182(e), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 103–335, title VIII, § 8114A(b)(1), Sept. 30, 1994, 108 Stat. 2648; Pub. L. 103–337, div. A, title VI, § 633(a), Oct. 5, 1994, 108 Stat. 2787.)

CONTINGENT AMENDMENT OF SUBSECTION (b)(2)(B)

Pub. L. 103–335, title VIII, § 8114A(b), Sept. 30, 1994, 108 Stat. 2648, provided that if the President proposes in the 1996 fiscal year budget and there is enacted in the first session of the 104th Congress qualifying offsetting legislation, then effective Jan. 1, 1996, subsection (b)(2)(B) of this section is amended as follows:

(A) in the heading, by striking out ''through 1998'' and inserting in lieu thereof ''through 1996''; and

(B) in clause (ii)—

(i) by striking out ''through 1998'' and inserting in lieu thereof ''and 1996'';

(ii) by striking out ''of 1994, 1995, 1996, or 1997'' and inserting in lieu thereof ''of 1994 or 1995''; and

(iii) by striking out ''September'' and inserting in lieu thereof ''March''.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–337 inserted ''based on the grade in which the member is retired'' after ''at an earlier date'' in first sentence and '', except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired'' before period at end of second sentence and struck out after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1993—Subsec. (b)(2). Pub. L. 103–160, § 1182(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in paragraph (6), the Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the base index.''

Pub. L. 103–66, § 2001(1), substituted ''Except as provided in paragraph (6), the Secretary'' for ''The Secretary''.

Subsec. (b)(6). Pub. L. 103–160, § 1182(e)(2), struck out par. (6) which read as follows: ''SPECIAL RULES FOR PARAGRAPH (2) FOR FISCAL YEARS 1994 THROUGH 1998.—

''(A) FISCAL YEAR 1994.—In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(B) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 103–66, § 2001(2), added par. (6).

1989—Subsec. (b)(3). Pub. L. 101–189, § 651(b)(1)(A), inserted ''and former member'' after first reference to ''member''.

Subsec. (e). Pub. L. 101–189, § 651(b)(1)(B), inserted ''or former member'' after first and third reference to ''member''.

Subsec. (f). Pub. L. 101–189, § 651(b)(1)(C), inserted ''or former member'' after ''member'' in second sentence.

1988—Subsec. (f). Pub. L. 100–456 inserted after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1987—Subsec. (a). Pub. L. 100–180 struck out ''pay'' after ''the retired pay''.

Subsec. (b)(4), (5). Pub. L. 100–224, § 1(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (e). Pub. L. 100–224, § 1(b), substituted ''by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

''(1) the percent by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

''(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.'' for ''only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay.''

1986—Subsec. (a). Pub. L. 99–348, § 102(b)(1), (c)(1), inserted heading, struck out ''or retainer'' after ''retired pay'', and struck out sentence defining ''Index'' in this section as meaning the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

Subsecs. (b) to (d). Pub. L. 99–348, § 102(a), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which read as follows:

''(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.

''(c) Notwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which

the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

''(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.''

Subsec. (e). Pub. L. 99–348, § 102(a), added subsec. (e).

Subsec. (f). Pub. L. 99–348, § 102(c)(2), inserted heading and struck out ''or retainer'' after ''retired'' wherever appearing.

Subsecs. (g), (h). Pub. L. 99–348, § 102(b)(2), added subsecs. (g) and (h) and struck out former subsec. (g) which provided that the retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of $1, would be rounded to the next lower multiple of $1.

1984—Subsec. (f). Pub. L. 98–525 substituted ''before October 7, 1975'' for ''prior to the effective date of this subsection''.

1983—Subsec. (e). Pub. L. 98–94, § 921(a)(1), struck out subsec. (e) which provided that: ''Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based.''

Subsec. (f). Pub. L. 98–94, § 921(b), struck out '', subject to subsection (e) of this section,'' after ''the computation shall''.

Subsec. (g). Pub. L. 98–94, § 922(a)(2), added subsec. (g).

1980—Subsec. (b). Pub. L. 96–342 substituted provisions directing the Secretary of Defense to increase the retired and retainer pay of members and former members of the armed forces each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of title 5, with such increase to be by the same percent as the percentage by which the annuities are increased for provisions under which the Secretary of Defense had been authorized and directed to increase the retired pay and retainer pay of members and former members of the armed forces on March 1 and September 1 depending upon determinations which the Secretary was directed to make on January 1 and July 1 of each year with regards to the percentage change in the index published for June or December of the previous year.

1976—Subsec. (b). Pub. L. 94–440 substituted provisions that Secretary of Defense shall determine the percent change in the index on Jan. 1 and July 1 of each year and effective Mar. 1 and Sept. 1, retired and retainer pay shall be increased by the computed percent change adjusted to the nearest 1/10 of 1 percent, for provisions that the Secretary of Defense shall determine on a monthly basis the percent by which the index has increased over that used as a basis for the most recent adjustment of retired and retainer pay and if Secretary determines for 3 consecutive months that the amount of increase is at least 3 percent over the base index, retired and retainer pay shall be increased by adding 1 percent and the highest percent increase in the index during those months adjusted to the nearest 1/10 of 1 percent.

Pub. L. 94–361 struck out ''the per centum obtained by adding 1 per centum and'' before ''the highest per centum of increase in the index''.

1975—Subsec. (f). Pub. L. 94–106 added subsec. (f).

1969—Subsec. (b). Pub. L. 91–179 provided for a 1 percent addition in computing increases in retired and retainer pay of present and former members of the armed forces, whenever the Secretary made such adjustments to effect increases in the consumer index over the base index.

1967—Subsec. (a). Pub. L. 90–207 substituted ''may not be recomputed'' for ''shall not be recomputed'', struck out ''if that increase becomes effective after the effective date of this section'' after ''armed forces'' and inserted sentence defining ''Index''.

Subsec. (b). Pub. L. 90–207 revised subsec. (b) generally and, among other changes, substituted provisions requiring the Secretary of Defense to determine monthly the percent by which the index has increased over that used as the basis for the most recent adjustment of retired and retainer pay under this subsection for provisions which required the Secretary of Defense to determine the per centum that the index for each calendar month after the calendar month immediately preceding the effective date of Pub. L. 89–132 has increased over the base index (that for the calendar month immediately preceding the effective date of Pub. L. 89–132 or, if later, that used as the basis for the most recent adjustment of retired and retainer pay under this subsection).

Subsecs. (c) to (e). Pub. L. 90–207 added subsecs. (c) to (e).

1965—Subsec. (b). Pub. L. 89–132 substituted provisions requiring the Secretary of Defense to determine the per centum for each calendar month that the Consumer Price Index has increased over the base Consumer Price Index, and if the index has shown an increase of at least 3 per centum over the base index for three consecutive calendar months to increase the retired or retainer pay by the highest per centum of increase in the index, for provisions which required a determination of the increase over the preceding calendar year and permitted an increase in the retired or retainer pay if the index advanced 3 per centum or more for a full calendar year.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 633(b) of Pub. L. 103–337 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of the retired pay of a member of the Armed Forces who retires on or after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 622(b) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Sept. 29, 1988] and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 921(a)(2) of Pub. L. 98–94, provided that:

''(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

''(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period.''

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 812(b)(1) of Pub. L. 96–342, set out below, provided that the amendment made by that section is effective Aug. 31, 1981, but subject to certain conditions.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1306(d)(2) of Pub. L. 94–440 provided that: ''The amendment made by subsection (1) [amending this section] shall apply to any increase in retired pay or retainer pay after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Secretary of Defense is to determine a percent change, such percent change shall be determined by computing the change in the index published for the month immediately preceding such first date over the index for the last month preceding the date of enactment of this Act used as the basis for the most recent adjustment of retired pay and retainer pay under section 1401a(b) of title 10, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of enactment of this Act [Oct. 1, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 2 of Pub. L. 91–179 provided that: ''The provisions of this Act [amending this section] become effective on October 31, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date of 1963 Amendment note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEAR 1995

Section 631 of Pub. L. 103–337 provided that:

''(a) IN GENERAL.—The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(b) DEFINITIONS.—For the purposes of subsection (a):

''(1) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(2) The term 'retired pay' includes retainer pay.

''(c) LIMITATION.—Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of $376,000,000 to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).''

SENSE OF CONGRESS ON EQUAL TREATMENT OF EFFECTIVE DATES FOR FUTURE COST-OF-LIVING ADJUSTMENTS FOR MILITARY AND CIVILIAN RETIREES

Section 632 of Pub. L. 103–337 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Congress, in the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66, see Tables for classification], changed the effective dates for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.

''(2) The timing, and the percentage of increase, of military and Federal civilian retirees' cost-of-living adjustments have been linked for decades.

''(3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.

''(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—

''(1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;

''(2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and

''(3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become payable for the earlier of the two months.''

WAIVER OF ADMINISTRATIVE TIME-IN-GRADE REQUIREMENTS TO PREVENT PAY INVERSIONS IN RETIRED PAY OF CERTAIN MILITARY RETIREES

Section 634 of Pub. L. 103–337 provided that:

''(a) AUTHORITY.—The Secretary concerned may, for purposes of the computation under section 1401a(f) of title 10, United States Code, of the retired pay of military retirees described in subsection (b), waive any administrative time-in-grade regulation (as described in subsection (d)) that would otherwise apply to such computation. Any such waiver may be made retroactive, in the case of any such retiree, to the date on which that retiree initially became entitled to retired pay.

''(b) COVERED RETIREES.—This section applies to any military retiree—

''(1) who initially became entitled to retired pay on or after January 1, 1971, and before the date of the enactment of this Act [Oct. 5, 1994];

''(2) whose retired pay, by reason of the provisions of section 1401a(f) of title 10, United States Code (the so-called 'Tower amendment'), was initially computed as an amount greater than would have been the case but for that section; and

''(3) who, as of the earlier computation date applicable to that retiree—

''(A) in the case of an individual retired in an enlisted grade, had served in the grade in which the retiree retired for a period that was less than the

period prescribed by the applicable administrative time-in-grade requirement described in subsection (d); and

''(B) in the case of an individual retired in an officer grade—

''(i) was subject to an administrative time-in-grade requirement described in subsection (d) that established a time-in-grade requirement that was longer than the statutory time-in-grade requirement applicable to that member; and

''(ii) had served in the grade in which the retiree retired for a period that was less than the period prescribed by such administrative time-in-grade requirement but not less than the statutory time-in-grade requirement applicable to that member.

''(c) EARLIER COMPUTATION DATE.—For purposes of subsection (b)(3), the earlier computation date applicable to a military retiree is the date that (under such section 1401a(f) as in effect on the date of the member's retirement) was the 'earlier date' that was used as the basis for the computation of the retiree's retired pay.

''(d) REGULATIONS SUBJECT TO WAIVER.—A regulation that may be waived under subsection (a) is any regulation (not required by law) that establishes a minimum period of time that a member of the Armed Forces must have served in a grade on active duty in order to be eligible to retire in that grade.

''(e) SCOPE OF WAIVER AUTHORITY.—The Secretary concerned may exercise the authority provided in subsection (a) in the case of an individual military retiree or for any group of military retirees.

''(f) MILITARY RETIREE DEFINED.—For purposes of this section, the term 'military retiree' means a member or former member of the Armed Forces who is entitled to retired pay.

''(g) SECRETARY CONCERNED.—For purposes of this section, the term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code.''

FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES

Pub. L. 103–335, title VIII, § 8114A, Sept. 30, 1994, 108 Stat. 2648, provided that:

''(a) FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENT FOR MILITARY RETIREES.—(1) The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(2) For the purposes of subsection (a):

''(A) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(B) The term 'retired pay' includes retainer pay.

''(b) FUTURE COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES.—

''(1) [Amended section 1401a of this title.]

''(2) Paragraph (1) shall be effective only if—

''(A) the President, in the budget of the President for fiscal year 1996, proposes legislation which if enacted would be qualifying offsetting legislation; and

''(B) there is enacted during the first session of the 104th Congress qualifying offsetting legislation.

''(3) If the conditions in paragraph (2) are met, then the amendments by paragraph (1) shall take effect on January 1, 1996.

''(4) For purposes of this subsection:

''(A) The term 'qualifying offsetting legislation' means legislation (other than an appropriations Act) that includes provisions that—

''(i) offset fully the increased outlays for each of fiscal years 1996, 1997, and 1998 to be made from the Department of Defense Military Retirement Fund by reason of the amendment made by paragraph (1);

''(ii) expressly state that they are enacted for the purpose of the offset described in clause (i); and

''(iii) are included in full on the PayGo scorecard.

''(B) The term 'PayGo scorecard' means the estimates that are made with respect to fiscal years through fiscal year 1998 by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 902(d)].''

CONTINGENT ONCE-A-YEAR ADJUSTMENT OF RETIRED AND RETAINER PAY

Pub. L. 96–342, title VIII, § 812, Sept. 8, 1980, 94 Stat. 1098, as amended Pub. L. 97–35, title II, § 211(b), Aug. 13, 1981, 95 Stat. 383, provided that:

''(a)(1) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code, shall not be made.

''(2)(A) In making the determination required by the provisions of paragraph (1)(A) of section 1401a(b) of title 10, United States Code, to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

''(B) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under subparagraph (A), adjusted to the nearest 1/10 of one percent.

''(3) The President shall by Executive order provide for only one cost-of-living adjustment in the annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) during the period beginning on September 1, 1980, and ending on August 31, 1981. Such adjustment shall be effective March 1, 1981, and shall be made in the same manner and percentage as the adjustment provided for in paragraphs (1) and (2) for the retired and retainer pay of members and former members of the uniformed services.

''(4) Paragraphs (1), (2), and (3) shall not take effect unless similar legislation is enacted which provides for only one cost-of-living increase in annuities paid under subchapter III of chapter 83 of title 5, United States Code, during the period beginning on September 1, 1980, and ending on August 31, 1981.

''(b)(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b), of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

'(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.'.

''(2) The amendment made by paragraph (1) shall not take effect unless legislation is enacted which provides for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the uniformed services at the same time that the legislation providing for such a once-a-year adjustment of annuities paid

under subchapter III of chapter 83 of title 5, United States Code, becomes effective.

''(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide for cost-of-living adjustments in the annuities paid under such Act on an identical basis.

''(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code, as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter III of chapter 83 of title 5, United States Code, was computed, then the percentage increase to be made under such section 1401a(b) at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code, is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) which is made at the same time as the increase in retired and retainer pay to which the preceeding [preceding] sentence is applicable.

''(c) For the purposes of this section, the term 'uniformed services' means—

''(1) the Armed Forces; and

''(2) the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.''

COMPUTATION OF RETIRED PAY OF SERGEANT MAJORS OF MARINE CORPS WHO COMPLETED SERVICE PRIOR TO DECEMBER 16, 1967

Pub. L. 95–581, Nov. 2, 1978, 92 Stat. 2478, provided: ''That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) $150.

''(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be readjusted to reflect such rate of basic pay.

''SEC. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act shall be effective for months beginning after September 30, 1978.

''(b) The enactment of this Act shall not reduce the retired pay of any individual.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 96–342, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF 1976 AMENDMENT

Section 801(c) of Pub. L. 94–361 provided that:

''(1) The amendments made by subsections (a) [to subsec. (b) of this section] and (b) [to provisions formerly set out as a note under section 403 of title 50] shall not become effective unless legislation is enacted repealing the so-called 1 per centum add-on provision applicable to the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code. In the event such legislation is enacted, such amendments shall become effective with respect to the cost-of-living adjustment of the retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees at the same time the repeal of such 1 per centum add-on provision becomes effective with respect to such cost-of-living adjustment of annuities paid under such chapter 83.

''(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code, the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code.

''(3) The provisions of paragraphs (1) and (2) relating to any change in the method of computing the cost-of-living adjustment of the retired pay or retainer pay of members and former members of the Armed Forces shall be applicable to the computation of cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 94–361, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

INCREASE IN CERTAIN ARMED FORCE MEMBERS' PAY AND ALLOWANCES NOT OTHERWISE TIED TO CONSUMER PRICE INDEX

Pub. L. 93–210, §2, Dec. 28, 1973, 87 Stat. 908, provided that:

''(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act [Dec. 28, 1973], the pay and allowances of members of the Armed Forces to whom this Act applies shall be increased to amounts equal to the amounts such pay and allowances would have been increased if the pay and allowances of such members had been increased, under section 1401a(b) of title 10, United States Code, by the same percentage rates, consecutively compounded, that the retired pay or retainer pay of members and former members of the Armed Forces entitled to retired pay or retainer pay since October 1, 1967, has been increased, and such member shall, on and after the date of enactment of this Act [Dec. 28, 1973], have his pay and allowances increased effective the same day and by the same

percentage rate that the retired pay or retainer pay of members and former members of the Armed Forces is increased under such section 1401a(b).

''(b) This section applies to members of the Armed Forces entitled to pay and allowances under either of the following provisions of law:

''(1) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [which authorized the appointment of one officer in the Regular Army in the permanent grade of general, one officer in the Regular Air Force in the permanent grade of general, and one officer in the Regular Navy in the permanent grade of admiral].

''(2) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [which authorized the appointment of Omar N. Bradley to the permanent grade of General of the Army].

''(c) No amounts shall be paid, as the result of the enactment of this section, for any period prior to the date of enactment of this section [Dec. 28, 1973].''

RETROACTIVE ADJUSTMENT OF RETIRED OR RETAINER PAY OF PERSONS ENTITLED THERETO AFTER NOVEMBER 30, 1966, BUT PRIOR TO EFFECTIVE DATE OF NEXT INCREASE AFTER JULY 1, 1966

Section 2(b) of Pub. L. 90–207 provided that: ''Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act [Dec. 16, 1967] and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay.''

CROSS REFERENCES

Employment of retired officers, reduction in retired pay, see section 5532 of Title 5, Government Organization and Employees.

Survivor benefit plan—

Annuity increases, see section 1451 of this title.

Base amount increases, see section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1402, 1402a, 1408, 1410, 1434, 1451, 1452 of this title; title 5 section 5532.

§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Subtract
Monthly basic pay[1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]	Excess over 75 percent of pay upon which computation is based.

[1] For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.[1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f)(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the monthly rate of basic pay upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; June 30, 1960, Pub. L. 86–559, § 1(5), 74 Stat. 265; Oct. 2, 1963, Pub. L. 88–132, § 5(*l*)(1), 77 Stat. 214; Dec. 16, 1967, Pub. L. 90–207, § 2(a)(2), 81 Stat. 653; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(b)(2), 94 Stat. 1102; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(50), 94 Stat. 2924; Sept. 24, 1983, Pub. L. 98–94, title IX, §§ 922(a)(3), (4), 923(a)(1), (2)(B), (C), 97 Stat. 641, 642; July 1, 1986, Pub. L. 99–348, title II, § 201(b)(3), title III, § 304(a)(3), (b)(3), 100 Stat. 694, 703; Oct. 23, 1992, Pub. L. 102–484, div. A, title VI, § 642(a), 106 Stat. 2424.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1402(a)	37:316.	Oct. 12, 1949, ch. 681, §§ 402(d) (last proviso, less applicability to retired grade), 516, 63 Stat. 819, 832.
1402(b), (c).	37:272(d) (1st 128 words of last proviso, less applicability to retired grade).	
1402(d)	37:272(d) (last proviso, less 1st 128 words, and less applicability to retired grade).	

In subsection (a), columns 1 and 2 of the table are based on 37:316 (1st proviso). Column 4 is based on 37:316 (last proviso). Footnote 1 is based on 37:316 (2d proviso). 37:316 (3d proviso) is omitted as operationally obsolete.

In subsections (a) and (d), the words ''and disregard a part of a year that is less than six months'' are added to footnote 1 to conform to footnote 3 of section 1401 of this title.

In subsection (b), the words ''for which he would otherwise be eligible for retired pay under chapter 61 of this title'' are substituted for the words ''in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration'' and ''if qualified''.

In subsection (c), the requirement that the physical disability incurred be 30 percent or more is omitted as surplusage, since it is also required that the member be qualified for physical disability retirement under section 1201 or 1204 of this title.

In subsection (d), the rules stated in 37:316 (2d and last provisos) are repeated in column 4 of the table and the footnote to the table, since they apply to all cases of increased pay for active duty performed after retirement.

CODIFICATION

Another section 304(b)(3) of Pub. L. 99–348 amended the table of sections at the beginning of chapter 571 of this title.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Pub. L. 99–348, § 304(b)(3), inserted ''of members who first became members before September 8, 1980'' in section catchline.

Subsec. (a). Pub. L. 99–348, §§ 201(b)(3), 304(a)(3), struck out ''(as defined in section 1407(a)(2) of this title)'' after ''uniformed service'' and struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

Subsecs. (b), (c). Pub. L. 99–348, § 304(a)(3), struck out ''(as defined in section 1407(a)(2) of this title)'' after ''uniformed service''.

Subsec. (d). Pub. L. 99–348, § 201(b)(3), struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

1983—Subsec. (a). Pub. L. 98–94, § 922(a)(3), substituted ''according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, § 923(a)(1), (2)(B), in footnote 2 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the

number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Subsec. (d). Pub. L. 98–94, § 922(a)(4), substituted ''according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, § 923(a)(1), (2)(C), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Subsecs. (a) to (c). Pub. L. 96–513 substituted ''a uniformed service (as defined in section 1407(a)(2) of this title) before September 8, 1980'' for ''the armed forces before the date of the enactment of the Department of Defense Appropriation Act, 1981'' wherever appearing.

Pub. L. 96–342 inserted ''who first became a member of the armed forces before the date of the enactment of the Department of Defense Authorization Act, 1981, and'' after ''of an armed force'' wherever appearing.

1967—Subsec. (d). Pub. L. 90–207, § 2(a)(2)(A), inserted ''increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay'' after ''retired,''.

Subsec. (e). Pub. L. 90–207, § 2(a)(2)(B), added subsec. (e).

1963—Subsec. (a). Pub. L. 88–132 substituted in introductory clause ''who has become entitled to retired pay or retainer pay'' for ''who has been retired or has become entitled to retainer pay'' and ''to recompute his retired pay or retainer pay upon his release from that duty'' for '', upon release from that duty, to recompute his retired or retainer pay'' and inserted in such clause ''(other than for training)'' after ''active duty''; substituted in column 1 of table ''Monthly basic pay'' for ''Monthly basic pay or base and longevity pay, as the case may be,'', designated existing provisions as (1) and added (2); substituted in (1) of column 2 of the table ''retired pay or retainer pay'' for ''retired or retainer pay'' and in (2) of such column 2 ''after becoming entitled to retired pay or retainer pay'' for ''after retirement or becoming entitled to retainer pay'', struck out column 3 relating to addition and redesignated column 4 as 3; added footnote 1 to the table and redesignated former footnote 1 as 2; and inserted provisions for recomputation of retired pay upon release from active duty of officers ordered to active duty in a higher grade based upon special commendation for performance of duty in actual combat.

1960—Subsec. (a). Pub. L. 86–559 prohibited recomputation of retired pay under subsec. (a) on the basis of any period of active duty that was of less than six consecutive months' duration or on the basis of any active duty for training for a reserve officer who is or has been retired under section 3911, 6323, or 8911 of this title or under section 232 of title 14.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

Section 642(c) of Pub. L. 102–484 provided that: ''No benefits shall accrue for months beginning before the date of the enactment of this Act [Oct. 23, 1992] by reason of the amendments made by this section [amending this section and section 1402a of this title].''

RECOMPUTATION OF RETIRED PAY OF CERTAIN RECALLED RETIREES

Pub. L. 98–525, title VI, § 655, Oct. 19, 1984, 98 Stat. 2552, provided that:

''(a) Notwithstanding the second sentence of footnote 1 of the table contained in section 1402(a) of title 10, United States Code (relating to recomputation of retired pay to reflect later active duty), in the case of a member of the Armed Forces who—

''(1) was voluntarily called or ordered to active duty during the period beginning on October 1, 1963, and ending on September 30, 1971;

''(2) was at the time of such call or order entitled to retired pay or retainer pay;

''(3) served on such active duty under such call or order for a continuous period of at least two years; and

''(4) was released from such active duty before October 1, 1973,

the retired or retainer pay of such member shall be recomputed, as provided in subsection (b), under the rates of basic pay in effect at the time of that release from active duty.

''(b) The retired or retainer pay of a member of the Armed Forces described in subsection (a) shall be the amount determined under section 1402(a) of title 10, United States Code (as modified with respect to such member by subsection (a)), and increased by the amount by which the member's retired or retainer pay would have been increased during the period beginning on the date of the member's release from active duty referred to in subsection (a)(4) and ending on the day before the day on which this section becomes effective had subsection (a) applied in the case of the member at the time of that release from active duty.

''(c) This section shall apply only with respect to retired pay and retainer pay payable for months beginning after September 30, 1984, or on or after the date of the enactment of this Act [Oct. 19, 1984], whichever is later.''

RETIRED PAY AND RETAINER PAY; PROHIBITION AGAINST RECOMPUTATION UNDER 1963 PAY RATES; EXCEPTIONS; INCREMENTS BASED ON THE GREATER OF A 5 PERCENT INCREASE OR RECOMPUTATION UNDER 1958 PAY RATES FOR MEMBERS RETIRED PRIOR TO OCTOBER 1949 FOR REASONS OTHER THAN PHYSICAL DISABILITY, MEMBERS RECEIVING RETIRED PAY UNDER CAREER COMPENSATION ACT OF 1949 AND FORMER CHIEFS OF STAFF; ADDITIONAL 5 PERCENT INCREASE FOR OTHER RETIRED MEMBERS; EXCLUSION FROM INCREASE OF OFFICERS RETIRED UNDER CERTAIN PROVISIONS

Section 5(a)–(f) of Pub. L. 88–132 provided that:

''(a) Except as provided in section 1402 of title 10, United States Code, the changes made by this Act [see Short Title note under section 201 of Title 37] in the rates of basic pay of members of the uniformed services do not increase the retired pay or retainer pay to which a member or former member of the uniformed services was entitled on the day before the effective date of this Act [Oct. 1, 1963]. However, except for a member covered by section 6331 of title 10, United States Code who became entitled to retainer pay before April 1, 1963, and subject to subsection (j) of this section [set out as a note below], a member or former member of a uniformed service who became entitled to retired pay or retainer pay after March 31, 1963, but before the effective date of this Act [Oct. 1, 1963], is entitled—

''(1) to have the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963] recomputed under the rates of basic pay prescribed by section 2 of this Act [amending section 203 of Title 37]; or

''(2) to continue to have that pay computed under the rates of basic pay that were in effect under section 203 of title 37, United States Code, on the day before the effective date of this Act [Oct. 1, 1963], plus the percentage increase provided by subsection (e) of this section;

whichever pay is the greater. For the purposes of the preceding sentence, a member or former member who became entitled to retired pay on April 1, 1963, by virtue of section 1 of the Act of April 23, 1930, ch. 209, as amended (5 U.S.C. 47a) [section 8301 of Title 5], shall be considered as having become entitled to that pay before April 1, 1963.

''(b) A member or former member of a uniformed service who was retired other than for physical disability and who, in accordance with section 511 of the Career Compensation Act of 1949 (63 Stat. 829) [10 U.S.C. 580 note], is entitled to retired pay or retainer pay computed by 'method' (a) of that section using rates of basic pay that were in effect before October 1, 1949, is entitled—

''(1) to have pay recomputed by 'method' (b) of that section using the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(c) A member or former member of a uniformed service who is entitled to retired pay or retainer pay computed under the rates of basic pay that were in effect under the Career Compensation Act of 1949 before June 1, 1958, including a member or former member who is entitled to retired pay under section 7 (b) or (c) of the Act of May 20, 1958, Public Law 85–422 (72 Stat. 130), is entitled—

''(1) to have that pay recomputed under the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(d) A member or former member of a uniformed service who was entitled to retired pay on the day before the effective date of this Act [Oct. 1, 1963] and who served as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps is entitled—

''(1) to have his retired pay recomputed under the formula for computing retired pay applicable to him—

''(A) when he retired; or

''(B) if he served on active duty after he retired and his retired pay was recomputed by reason of that service, when his retired pay was so recomputed;

using as his rate of basic pay the rate of basic pay prescribed for officers serving on active duty in those positions on June 1, 1958, by footnote 1 to table for commissioned officers in section 201(a) of the Career Compensation Act of 1949, as amended (72 Stat. 122) [see section 203 of Title 37]; or

''(2) to an increase of 5 percent in the retired pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(e) A member or former member of a uniformed service who was entitled to retired pay or retainer pay on the day before the effective date of this Act [Oct. 1, 1963], other than a member or former member who is covered by subsection (b), (c), or (d) of this section, is entitled to an increase of 5 percent in the retired or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963].

''(f) Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Oct. 1, 1963] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

RETIRED PAY AND RETAINER PAY; RETROACTIVE EFFECT

Section 5(j) of Pub. L. 88–132 provided that: ''A member or former member of a uniformed service is not entitled to an increase in his retired pay or retainer pay because of the enactment of this Act [see Short Title note set out under section 201 of Title 37] for any period before the effective date of this Act [Oct. 1, 1963].''

SAVINGS PROVISION

Section 5(*l*)(2) of Pub. L. 88–132 provided that: ''Notwithstanding paragraph (1) of this subsection [amending this section], and unless otherwise entitled to higher retired pay or retainer pay, a member of a uniformed service who is on active duty (other than for training) on the effective date of this Act [Oct. 1, 1963], who was entitled to retired pay or retainer pay before he entered on that duty, and who is released from that duty on or after the effective date of this Act after having served on that duty for a continuous period of at least one year shall, upon that release from active duty, be entitled to recompute his retired pay or retainer pay under the table in section 1402 of title 10, United States Code [this section], subject to section 6483(c) of title 10, as that table and that section were in effect on the day before the effective date of this Act, using rates of basic pay prescribed by this Act [section 203 of Title 37].''

CROSS REFERENCES

Exclusion of certain periods of service in recomputing retired or retainer pay, see section 205 of Title 37, Pay and Allowances of the Uniformed Services.

Higher grade for later physical disability: retired officers recalled to active duty, see section 1373 of this title.

Transfer to Fleet Reserve and Fleet Marine Corps Reserve, recomputation of retainer pay, see section 6330 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1373, 1403, 1406, 6330 of this title; title 37 section 205.

§1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980

(a) IN GENERAL.—A member of an armed force—

(1) who first became a member of a uniformed service after September 7, 1980;

(2) who has become entitled to retired pay or retainer pay; and

(3) who thereafter serves on active duty (other than for training),

is entitled to recompute his retired pay or retainer pay upon release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Retired pay base or retainer pay base under section 1407 which he would be entitled to use if— (1) he were retiring upon release from that active duty; or (2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.

(b) NEW DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) ADDITIONAL OR AGGRAVATED DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) COMPUTATION FOR LATER DISABILITY.—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75 percent of retired or retainer pay base upon which computation is based.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(e) ALTERNATIVE RECOMPUTATION TO SUBSECTION (a) FORMULA.—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the monthly retired pay base under which his retired pay or retainer pay was computed when he entered on that active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Added Pub. L. 96–342, title VIII, § 813(b)(3)(A), Sept. 8, 1980, 94 Stat. 1102; amended Pub. L. 96–513, title V, § 511(51)(A), (B), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§ 922(a)(5), (6), 923(a)(1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, § 201(b)(1), (2), July 1, 1986, 100 Stat. 693; Pub. L. 102–484, div. A, title VI, § 642(b), Oct. 23, 1992, 106 Stat. 2425.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–348, § 201(b)(1), amended subsec. (a) generally. Prior to the amendment, subsec. (a) read as follows: "A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his

retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Subsec. (b). Pub. L. 99–348, §201(b)(2)(A), inserted heading.

Subsec. (c). Pub. L. 99–348, §201(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 99–348, §201(b)(2)(C), inserted heading, struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1, and in column 1 of table struck out ''monthly'' before ''retired pay'' and in column 4 of table struck out ''monthly'' before ''retired or''.

Subsec. (e). Pub. L. 99–348, §201(b)(2)(D), inserted heading.

1983—Subsec. (a). Pub. L. 98–94, §922(a)(5), substituted ''according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, §923(a)(1), (2)(D), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Subsec. (d). Pub. L. 98–94, §922(a)(6), substituted ''according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, §923(a)(1), (2)(E), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, §511(51)(B), substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in section catchline.

Subsecs. (a) to (c). Pub. L. 96–513, §511(51)(A), substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

No benefits to accrue for months beginning before Oct. 23, 1992, by reason of the amendment by Pub. L. 102–484, see section 642(c) of Pub. L. 102–484, set out as a note under section 1402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1373, 1403, 6330 of this title; title 37 section 205.

§1403. Disability retired pay: treatment under Internal Revenue Code of 1986

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d) of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1986.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Sept. 8, 1980, Pub. L. 96–342, title VIII, §813(b)(3)(C), 94 Stat. 1104; Dec. 12, 1980, Pub. L. 96–513, title V, §511(52)(A), (B), 94 Stat. 2925; Pub. L. 100–26, §7(h)(1), (2)(A), Apr. 21, 1987, 101 Stat. 282.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1403	37:272(h).	Oct. 12, 1949, ch. 681, §402(h), 63 Stat. 820.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is set out in Title 26, Internal Revenue Code.

AMENDMENTS

1987—Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in section catchline and text.

1980—Pub. L. 96–513 substituted ''the Internal Revenue Code of 1954'' for ''title 26'' in section catchline and text.

Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 104.

§1404. Applicability of section 8301 of title 5

The retirement provisions of this title are subject to section 8301 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1404	[No source].	[No source].

The effect of the act of April 23, 1930 (5 U.S.C. 47a), in temporarily deferring retirement dates otherwise specifically fixed by law is reflected in the sections of the proposed text that name those dates. This section is inserted to make clear that under that act such deferments have no effect on the applicability of the specific rates that are to be used in computing retired pay.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' in section catchline and text.

§1405. Years of service

(a) IN GENERAL.—For the purposes of the computation of the years of service of a member of

the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

(b) FRACTIONAL YEARS OF SERVICE.—In determining a member's years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(c) EXCLUSION OF TIME REQUIRED TO BE MADE UP.—Time required to be made up by an enlisted member of the Army or Air Force under section 972 of this title may not be counted in determining years of service under subsection (a).

(Added Pub. L. 85–422, §11(a)(1)(A), May 20, 1958, 72 Stat. 130; amended Pub. L. 85–861, §1(31A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–649, §6(f)(4), Sept. 7, 1962, 76 Stat. 494; Pub. L. 87–651, title I, §109, Sept. 7, 1962, 76 Stat. 509; Pub. L. 90–130, §1(7), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title I, §113(b), Dec. 12, 1980, 94 Stat. 2877; Pub. L. 97–295, §1(17), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–348, title I, §106, July 1, 1986, 100 Stat. 691; Pub. L. 103–337, div. A, title VI, §635(d), title XVI, §1662(j)(3), Oct. 5, 1994, 108 Stat. 2789, 3004.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1405	[No source].	[No source].

The amendment reflects section 11 of the Act of May 20, 1958, Pub. L. 85–422 (72 Stat. 130).

1962 ACT

The change corrects a typographical error.

1982 ACT

This amends 10:1405 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. Under provisions of law first enacted in 1948 through the codification of title 10 in 1956 and until 1965, warrant officers advanced on the retired list received credit for inactive service in the computation of retirement pay. The Comptroller General in 1965 (B–156576) held in effect that computation of such retirement pay was governed by the wording of new title 10 that based the computation on years of active service only even though this had the result of making a substantive change. The Armed Services Committee of the House of Representatives concurs that an error was made in the codification of title 10 and has indicated that corrective legislative action is properly a responsibility of the House Judiciary Committee. See, also, the amendments to 10:3992 and 8992 made by sections 1(40) and 1(52), respectively.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–337, §1662(j)(3), substituted ''12733'' for ''1333'' and ''12731'' for ''1331''.

Subsec. (c). Pub. L. 103–337, §635(d), added subsec. (c).

1986—Pub. L. 99–348 designated existing provision as subsec. (a), inserted heading, and in provision preceding par. (1) substituted ''the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member'' for ''section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces'', and added subsec. (b).

1982—Pub. L. 97–295, §1(17), substituted ''3991 (formula A), 3992 (formula B)'' for ''3991 (formula B)'', struck out ''or'' first time appearing, and substituted ''8991 (formula A), or 8992 (formula B)'' for ''8991 (formula B)''.

1980—Pub. L. 96–513 struck out provisions that permitted the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers and provided that members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under section 1333 if he were entitled to retired pay under section 1331.

1967—Pub. L. 90–130 struck out references to section 6399(c)(2) of this title.

1962—Pub. L. 87–651 struck out references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87–649 substituted ''section 205(a)(7) and (8) of title 37'' for ''section 233(a)(7) of title 37'' in cl. (2).

1958—Pub. L. 85–861 inserted references to sections 6323(e) and 6391(h) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 635(e) of Pub. L. 103–337 provided that: ''This section [amending this section and sections 3925, 3991, 3992, 6333, 8925, 8991, and 8992 of this title] shall apply to—

''(1) the computation of the retired pay of any enlisted member who retires on or after the date of the enactment of this Act [Oct. 5, 1994];

''(2) the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after the date of the enactment of this Act; and

''(3) the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after the date of the enactment of this Act.''

Amendment by section 1662(j)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective June 1, 1958, see section 9 of Pub. L. 85–422.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings

that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1175, 1401, 3991, 3992, 6151, 6333, 6334 of this title; title 14 section 423; title 33 section 853*o*.

§1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) RETIREMENT UNDER SUBTITLE A OR E.—

(1) DISABILITY, WARRANT OFFICER, AND DOPMA RETIREMENT.—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
1201 1202 1204 1205	Monthly basic pay[1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
580 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.
633 634 635 636 1251	Monthly basic pay[2] of member's retired grade.[3]

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.
[2] Compute at rates applicable on date of retirement.
[3] For the purposes of this subsection, determine member's retired grade as if sections 3962(b) and 8962(b) did not apply.

(2) NON-REGULAR SERVICE RETIREMENT.—In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted, of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370(d) of this title.

(c) VOLUNTARY RETIREMENT FOR MEMBERS OF THE ARMY.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
3911 3918 3920 3924	Monthly basic pay of member's retired grade.[1]
3914 3917	Monthly basic pay to which member was entitled on day before he retired.
3992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 3962(b) did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) RETIREMENT FOR MEMBERS OF THE NAVY AND MARINE CORPS.—In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
6323 6325(a) 6383	Basic pay of the grade in which the member retired.[1]
6325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 6325(b).
6326	Basic pay of the pay grade in which the member was serving on the day before retirement.
6330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
6151	Basic pay of the grade to which the member is advanced under section 6151.
6334	Basic pay of the grade to which the member is advanced under section 6334.

[1] If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) VOLUNTARY RETIREMENT FOR MEMBERS OF THE AIR FORCE.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
8911 8918 8920 8924	Monthly basic pay of member's retired grade.[1]
8914 8917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 8962(b) did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) COAST GUARD.—In the case of a member who is retired under any section of title 14, the member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853*o*), the retired pay base is the basic pay of the rank with which the officer retired.

(h) COMMISSIONED CORPS OF PUBLIC HEALTH SERVICE.—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) MANDATORY RETIREMENT.—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) VOLUNTARY RETIREMENT.—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) DEFINITIONS.—In this subsection:

(A) The term ''Chief of Service'' means any of the following:

(i) Chief of Staff of the Army.

(ii) Chief of Naval Operations.

(iii) Chief of Staff of the Air Force.

(iv) Commandant of the Marine Corps.

(v) Commandant of the Coast Guard.

(B) The term ''senior enlisted member'' means any of the following:

(i) Sergeant Major of the Army.

(ii) Master Chief Petty Officer of the Navy.

(iii) Chief Master Sergeant of the Air Force.

(iv) Sergeant Major of the Marine Corps.

(v) Master Chief Petty Officer of the Coast Guard.

(Added Pub. L. 99–348, title I, § 104(b), July 1, 1986, 100 Stat. 686; amended Pub. L. 100–180, div. A, title V, § 512(d)(2), title XIII, § 1314(b)(6), Dec. 4, 1987, 101 Stat. 1090, 1175; Pub. L. 100–456, div. A, title XII, § 1233(c), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 102–190, div. A, title XI, § 1131(7), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–337, div. A, title XVI, § 1662(j)(4), Oct. 5, 1994, 108 Stat. 3004.)

PRIOR PROVISIONS

A prior section 1406 was renumbered section 12738 of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–337 substituted ''Subtitle A or E'' for ''Subtitle A'' in subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, in table struck out item for section 1331 which related to monthly basic pay of highest grade held satisfactorily by person at any time in armed forces, renumbered footnotes 3 and 4 as 2 and 3, respectively, and struck out former footnote 2 which provided for computations at rates applicable on date when retired pay is granted, and added par. (2).

1991—Subsec. (b). Pub. L. 102–190 substituted ''580'' for ''564'' in table.

1988—Subsec. (b). Pub. L. 100–456 substituted ''satisfactorily by person'' for ''satisfactory by person'' in item relating to section 1331 in table.

1987—Subsec. (d). Pub. L. 100–180, § 512(d)(2), inserted ''or 6334'' after ''6151'' in text, and inserted item relating to section 6334 at end of table.

Subsec. (i). Pub. L. 100–180, § 1314(b)(6), inserted ''and Vice Chairmen'' after ''Chairmen'' in heading and inserted ''or Vice Chairman'' after ''Chairman'' in par. (1).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

GRADE ON TRANSFER TO RETIRED RESERVE

Section 1688 of title XVI of Pub. L. 103–337 provided that: ''In determining the highest grade held satisfactorily by a person at any time in the Armed Forces for the purposes of paragraph (2) of section 1406(b) of title 10, United States Code, as added by this title, the requirement for satisfactory service on the reserve active-status list contained in section 1370(d) of title 10,

United States Code, as added by this title, shall apply only to reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion under chapter 36 of that title or under chapter 1405 of that title, as added by this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code, after the effective date of this title [see Effective Date note set out under section 10001 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 3991, 3992, 6151, 6333, 6334, 8991, 8992, 12739 of this title; title 33 section 853*o*; title 42 section 211.

§1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) HIGH-THREE AVERAGE.—The retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS ENTITLED TO RETIRED OR RETAINER PAY FOR REGULAR SERVICE.—

(1) GENERAL RULE.—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 1331[1] of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(d) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS AND FORMER MEMBERS ENTITLED TO RETIRED PAY FOR NONREGULAR SERVICE.—

(1) RETIRED PAY UNDER CHAPTER 67.[1]—The high-three average of a member or former member entitled to retired pay under section 1331[1] of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) NONREGULAR SERVICE DISABILITY RETIRED PAY.—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (notwithstanding paragraph (2)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) HIGH-36 MONTHS.—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) LIMITATION FOR ENLISTED MEMBERS RETIRING WITH LESS THAN 30 YEARS' SERVICE.—In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(Added Pub. L. 99–348, title I, §104(b), July 1, 1986, 100 Stat. 689; amended Pub. L. 101–189, div. A, title VI, §651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460; Pub. L. 103–337, div. A, title XVI, §1662(j)(5), Oct. 5, 1994, 108 Stat. 3004.)

REFERENCES IN TEXT

Section 1331 of this title, referred to in subsecs. (c)(1) and (d)(1), was renumbered section 12731 of this title

[1] See References in Text note below.

and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 2999. A new section 1331 was added by section 1662(j)(7) of Pub. L. 103–337.

Chapter 67 of this title, referred to in subsec. (d)(1), was transferred to part II of subtitle E of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§ 1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

PRIOR PROVISIONS

A prior section 1407, added Pub. L. 96–342, title VIII, § 813(a)(1), Sept. 8, 1980, 94 Stat. 1100; amended Pub. L. 96–513, title I, § 113(c), title V, §§ 501(21), 511(53), Dec. 12, 1980, 94 Stat. 2877, 2908, 2925, related to determination of retired base pay, prior to repeal by Pub. L. 99–348, § 104(b).

AMENDMENTS

1994—Subsec. (c)(2)(B). Pub. L. 103–337, § 1662(j)(5)(A), which directed substitution of ''chapter 1223'' for ''chapter 67'', could not be executed because the words ''chapter 67'' did not appear subsequent to amendment by Pub. L. 101–189, § 651(a)(2), (4). See 1989 Amendment note below.

Subsec. (f)(2). Pub. L. 103–337, § 1662(j)(5)(B), which directed amendment of subsec. (f)(2) by substituting ''Chapter 1223'' for ''Chapter 67'' in heading and ''section 12731'' for ''section 1331'' in text, could not be executed because of previous repeal of subsec. (f) by Pub. L. 101–189, § 651(a)(2). See 1989 Amendment note below.

1989—Subsec. (b). Pub. L. 101–189, § 651(a)(1), (b)(2), substituted ''person'' for ''member'', ''person's'' for ''member's'', and ''subsection (c) or (d)'' for ''subsection (c)''.

Subsec. (c). Pub. L. 101–189, § 651(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which related to computation of high-three average.

Subsec. (d). Pub. L. 101–189, § 651(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–189, § 651(a)(2), (3), redesignated subsec. (d) as (e) and struck out former subsec. (e) which related to special rules for short-term disability retirees.

Subsecs. (f), (g). Pub. L. 101–189, § 651(a)(2), struck out subsec. (f) which related to special rule for members retiring with non-regular service, and subsec. (g) which defined the term ''years of creditable service''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1402a, 3991, 3992, 6151, 6333, 6334, 8991, 8992, 12739 of this title; title 14 sections 357, 423, 424; title 33 section 853*o*; title 42 sections 211, 212.

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) DEFINITIONS.—In this section:

(1) The term ''court'' means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction; and

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country.

(2) The term ''court order'' means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in section 462(b) of the Social Security Act (42 U.S.C. 662(b)));

(ii) payment of alimony (as defined in section 462(c) of the Social Security Act (42 U.S.C. 662(c))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term ''disposable retired pay'' means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

(5) The term ''member'' includes a former member entitled to retired pay under section 1331[1] of this title.

(6) The term ''spouse or former spouse'' means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term ''retired pay'' includes retainer pay.

(b) EFFECTIVE SERVICE OF PROCESS.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by certified or registered mail, return receipt requested;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) AUTHORITY FOR COURT TO TREAT RETIRED PAY AS PROPERTY OF THE MEMBER AND SPOUSE.—(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) PAYMENTS BY SECRETARY CONCERNED TO SPOUSE OR FORMER SPOUSE.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a

[1] See References in Text note below.

division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(e) LIMITATIONS.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under sec-

tion 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) IMMUNITY OF OFFICERS AND EMPLOYEES OF UNITED STATES.—(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) NOTICE TO MEMBER OF SERVICE OF COURT ORDER ON SECRETARY CONCERNED.—A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.—(1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation); and

(B) the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so terminated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive

any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) REGULATIONS.—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(Added Pub. L. 97–252, title X, § 1002(a), Sept. 8, 1982, 96 Stat. 730; amended Pub. L. 98–525, title VI, § 643(a)–(d), Oct. 19, 1984, 98 Stat. 2547; Pub. L. 99–661, div. A, title VI, § 644(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §§ 3(3), 7(h)(1), Apr. 21, 1987, 101 Stat. 273, 282; Pub. L. 101–189, div. A, title VI, § 653(a)(5), title XVI, § 1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; Pub. L. 101–510, div. A, title V, § 555(a)–(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub. L. 102–190, div. A, title X, § 1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title VI, § 653(a), Oct. 23, 1992, 106 Stat. 2426; Pub. L. 103–160, div. A, title V, § 555(a), (b), title XI, § 1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771.)

REFERENCES IN TEXT

Section 1331 of this title, referred to in subsec. (a)(5), was renumbered section 12731 of this title and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 2999. A new section 1331 was added by section 1662(j)(7) of Pub. L. 103–337.

The Soldiers' and Sailors' Civil Relief Act, referred to in subsec. (b)(1)(D), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see section 501 of the Appendix to Title 50 and Tables.

AMENDMENTS

1993—Subsecs. (b)(1)(A), (f)(1), (2). Pub. L. 103–160, § 1182(a)(2)(A), substituted ''subsection (i)'' for ''subsection (h)''.

Subsec. (h)(2)(A). Pub. L. 103–160, § 555(b)(1), inserted ''or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (h)(4)(B). Pub. L. 103–160, § 1182(a)(2)(B), inserted ''of'' after ''of that termination''.

Subsec. (h)(8). Pub. L. 103–160, § 555(b)(2), inserted before period at end ''or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard''.

Subsec. (h)(10), (11). Pub. L. 103–160, § 555(a), added par. (10) and redesignated former par. (10) as (11).

1992—Subsecs. (h), (i). Pub. L. 102–484 added subsec. (h) and redesignated former subsec. (h) as (i).

1991—Pub. L. 102–190 inserted ''or retainer'' after ''retired'' in section catchline.

1990—Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' in section catchline.

Subsec. (a). Pub. L. 101–510, § 555(g)(1), inserted heading.

Subsec. (a)(2)(C). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (a)(4). Pub. L. 101–510, § 555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing in introductory provisions and in subpar. (D).

Subsec. (a)(4)(A). Pub. L. 101–510, § 555(b)(1), inserted before semicolon at end ''for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay''.

Subsec. (a)(4)(B). Pub. L. 101–510, § 555(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''are required by law to be and are deducted from the retired or retainer pay of such member, in-

cluding fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;''.

Subsec. (a)(4)(C) to (F). Pub. L. 101–510, §555(b)(3), (4), redesignated subpars. (E) and (F) as (C) and (D), respectively, and struck out former subpars. (C) and (D) which read as follows:

''(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

''(D) are withheld under section 3402(i) of the Internal Revenue Code of 1986 if such member presents evidence of a tax obligation which supports such withholding;''.

Subsec. (a)(7). Pub. L. 101–510, §555(f)(1), added par. (7).

Subsec. (b). Pub. L. 101–510, §555(g)(2), inserted heading.

Subsec. (c). Pub. L. 101–510, §555(g)(3), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 101–510, §555(a), inserted at end ''A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.''

Subsec. (c)(2). Pub. L. 101–510, §555(c), inserted at end ''Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.''

Subsec. (c)(4). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (d). Pub. L. 101–510, §555(g)(4), inserted heading.

Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (e). Pub. L. 101–510, §555(g)(5), inserted heading.

Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–510, §555(d)(1), substituted ''payable under all court orders pursuant to subsection (c)'' for ''payable under subsection (d)''.

Subsec. (e)(4)(B). Pub. L. 101–510, §555(d)(2), substituted ''the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States'' for ''the disposable retired or retainer pay payable to such member''.

Subsec. (f). Pub. L. 101–510, §555(g)(6), inserted heading.

Subsec. (f)(1). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (g). Pub. L. 101–510, §555(g)(7), inserted heading.

Subsec. (h). Pub. L. 101–510, §555(g)(8), inserted heading.

1989—Subsec. (a)(1), (2). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'court'' for ''`Court'' in introductory provisions.

Subsec. (a)(3). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'final'' for ''`Final''.

Subsec. (a)(4). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'disposable'' for ''`Disposable'' in introductory provisions.

Subsec. (a)(4)(D). Pub. L. 101–189, §653(a)(5)(A), struck out ''(26 U.S.C. 3402(i))'' after ''Code of 1986''.

Subsec. (a)(5). Pub. L. 101–189, §§653(a)(5)(B), 1622(e)(6), substituted ''The term 'member'' for ''`Member'' and inserted ''entitled to retired pay under section 1331 of this title'' after ''a former member''.

Subsec. (a)(6). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'spouse'' for ''`Spouse''.

1987—Subsec. (a)(4). Pub. L. 100–26, §3(3), made technical amendment to directory language of Pub. L. 99–661, §644(a). See 1986 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 100–26, §7(h)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1986—Subsec. (a)(4). Pub. L. 99–661, §644(a), as amended by Pub. L. 100–26, §3(3), struck out ''(other than the retired pay of a member retired for disability under chapter 61 of this title)'' before ''less amounts'' in introductory text, added subpar. (E), and struck out former subpar. (E) which read as follows: ''are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or''.

1984—Subsec. (a)(2)(C). Pub. L. 98–525, §643(a), inserted ''in the case of a division of property,''.

Subsec. (b)(1)(C). Pub. L. 98–525, §643(b), inserted '', if possible,''.

Subsec. (d)(1). Pub. L. 98–525, §643(c)(1), substituted ''After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order'' for ''After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order''.

Subsec. (d)(5). Pub. L. 98–525, §643(c)(2), substituted ''child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part'' for ''disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part''.

Subsec. (e)(2). Pub. L. 98–525, §643(d)(1), substituted '', the disposable retired or retainer pay of the member'' for ''from the disposable retired or retainer pay of a member, such pay'' before ''shall be used to satisfy''.

Subsec. (e)(3)(A). Pub. L. 98–525, §643(d)(2)(A), struck out ''from the disposable retired or retainer pay'' before ''of the same member''.

Subsec. (e)(3)(A)(i). Pub. L. 98–525, §643(d)(2)(B), substituted ''from the member's disposable retired or retainer pay the least amount'' for ''the least amount of disposable retired or retainer pay'' before ''directed to be paid''.

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98–525, §643(d)(2)(C), struck out ''of retired or retainer pay'' before ''required by any conflicting''.

Subsec. (e)(4)(A). Pub. L. 98–525, §643(d)(3), struck out ''the retired or retainer pay of'' before ''the same member'' and substituted ''satisfaction of such court orders

and legal process from the retired or retainer pay of the members shall be'' for ''such court orders and legal process shall be satisfied''.

Subsec. (e)(5). Pub. L. 98–525, § 643(d)(4), struck out ''of disposable retired or retainer pay'' after ''payment of an amount'' in two places and substituted ''disposable retired or retainer pay'' for ''such pay'' before ''available for payment''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 555(c) of Pub. L. 103–160 provided that: ''The amendments made by this section [amending this section] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102–484 (106 Stat. 2426) [amending this section].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 555(e) of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title X, § 1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

''(2) The amendments made by subsections (b), (c), and (d) [amending this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(3) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(b) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 643(e) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984].''

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 1006 of title X of Pub. L. 97–252, as amended by Pub. L. 98–94, title IX, § 941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98–525, title VI, § 645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

''(a) The amendments made by this title [amending this section and sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title and enacting provisions set out as notes under this section and section 1408 of this title] shall take effect on the first day of the first month [February 1983] which begins more than one hundred and twenty days after the date of the enactment of this title [Sept. 8, 1982].

''(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title [Feb. 1, 1983, provided in subsec. (a)], but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

''(c) The amendments made by section 1003 of this title [amending sections 1447, 1448, and 1450 of this title] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [section 1447 et seq. of this title], before, on, or after the effective date of such amendments.

''(d) The amendments made by section 1004 of this title [amending sections 1072, 1076, and 1086 of this title] and the provisions of section 1005 of this title [set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

''(e) For the purposes of this section—

''(1) the term 'court order' has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

''(2) the term 'former spouse' has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

''(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

ACCRUAL OF PAYMENTS; PROSPECTIVE APPLICABILITY

Section 653(c) of Pub. L. 102–484 provided that: ''No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992].''

STUDY CONCERNING BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE

Section 653(e) of Pub. L. 102–484 provided that:

''(1) The Secretary of Defense shall conduct a study in order to estimate—

''(A) the number of persons who will become eligible to receive payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), during each of fiscal years 1993 through 2000; and

''(B) for each of fiscal years 1993 through 2000, the number of members of the Armed Forces who, after having completed at least one, and less than 20, years of service in that fiscal year, will be approved in that fiscal year for separation from the Armed Forces as a result of having abused a spouse or dependent child.

''(2) The study shall include a thorough analysis of—

''(A) the effects, if any, of appeals and requests for clemency in the case of court-martial convictions on the entitlement to payments in accordance with subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a));

''(B) the socio-economic effects on the dependents of members of the Armed Forces described in subsection (h)(2) of such section that result from terminations of the eligibility of such members to receive retired or retainer pay; and

''(C) the effects of separations of such members from the Armed Forces on the mission readiness of the units of assignment of such members when separated and on the Armed Forces in general.

''(3) Not later than one year after the date of the enactment of this Act [Oct. 23, 1992], the Secretary shall

submit to Congress a report on the results of the study.''

COMMISSARY AND EXCHANGE PRIVILEGES

Section 1005 of Pub. L. 97–252, which directed Secretary of Defense to prescribe regulations to provide that an unremarried former spouse described in 10 U.S.C. 1072(2)(F)(i) is entitled to commissary and post exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services, was repealed and restated in section 1062 of this title by Pub. L. 100–370, §1(c)(1), (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1059, 1078a, 1447, 1461, 1463 of this title.

§1409. Retired pay multiplier

(a) RETIRED PAY MULTIPLIER FOR REGULAR-SERVICE NONDISABILITY RETIREMENT.—In computing—

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than—

(A) chapter 61 of this title (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) PERCENTAGE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of—

(A) 2½, and

(B) the member's years of creditable service (as defined in subsection (c)).

(2) REDUCTION APPLICABLE TO NEW-RETIREMENT MEMBERS WITH LESS THAN 30 YEARS OF SERVICE.—In the case of a member who first became a member of a uniformed service after July 31, 1986, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by—

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B) 1/12 of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 75 PERCENT LIMIT.—In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(c) YEARS OF CREDITABLE SERVICE DEFINED.—In this section, the term ''years of creditable service'' means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member).

(Added Pub. L. 99–348, title I, §101, July 1, 1986, 100 Stat. 683; amended Pub. L. 101–189, div. A, title VI, §651(b)(3), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–337, div. A, title XVI, §1662(j)(6), Oct. 5, 1994, 108 Stat. 3005.)

AMENDMENTS

1994—Subsec. (a)(1)(B). Pub. L. 103–337 substituted ''chapter 1223'' for ''chapter 67''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''who is entitled to that pay'' for ''who is retired'' in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1402a, 1410, 1447, 1451, 1452, 3991, 3992, 6151, 6333, 6334, 8991, 8992 of this title; title 14 section 423; title 33 section 853*o*; title 42 sections 211, 212.

§1410. Restoral of full retirement amount at age 62 for members entering on or after August 1, 1986

In the case of a member or former member who first became a member of a uniformed service on or after August 1, 1986, and who becomes entitled to retired pay before the age of 62, the retired pay of such member or former member shall be recomputed, effective on the first day of the first month beginning after the member or former member attains 62 years of age, so as to be the amount equal to the amount of retired pay to which the member or former member would be entitled on that date if—

(1) increases in the retired pay of the member or former member under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and

(2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section.

(Added Pub. L. 99–348, title I, §103, July 1, 1986, 100 Stat. 685; amended Pub. L. 100–224, §2, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 101–189, div. A, title VI, §651(b)(4), Nov. 29, 1989, 103 Stat. 1460.)

AMENDMENTS

1989—Pub. L. 101–189, §651(b)(4), in introductory provisions, inserted ''or former member'' after ''In the case of a member'', ''the retired pay of such member'', ''after the member'', and ''to which the member'', and in par. (1), substituted ''retired pay of the member or former member'' for ''member's retired pay''.

1987—Pub. L. 100–224 struck out heading ''(a) General rule'', substituted provisions that the amount equal to the amount of retired pay to which the member would be entitled on that date if (1) increases in the member's retired pay under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and (2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section, for provisions that the amount equal to (1) the amount of the member's initial unreduced retired pay, increased by (2) the percent (adjusted to the nearest one-tenth of 1 percent) by which (A) the price index for

the most recent base quarter ending more than 31 days before the date the member attains 62 years of age, exceeds (B) the price index for the calendar quarter immediately before the date the member first became entitled to retired pay, and struck out subsec. (b) which had directed that, in this section, the term ''initial unreduced retired pay'' meant the amount of retired pay (A) to which the member was entitled when the member first became entitled to retired pay; or (B) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, to which the member would have been entitled on the date of the member's retirement without regard to that section, and that the definitions in subsection (g), and the provisions of subsection (h), of section 1401a of this title applied to this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1451, 1452 of this title.

§ 1411. Rules of construction

(a) CONSTRUCTION OF ''FIRST BECAME A MEMBER''.—For purposes of this chapter and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) REFERENCES IN TABLES.—Section references in tables in this chapter are to sections of this title.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691.)

§ 1412. Rounding to next lower dollar

Amounts computed under this chapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691.)

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

Subchapter		Sec.
I.	Retired Serviceman's Family Protection Plan	1431
II.	Survivor Benefit Plan	1447
III.	Supplemental Survivor Benefit Plan	1456

AMENDMENTS

1990—Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, amended Pub. L. 101–189, § 1404(a)(2), see 1989 Amendment note below.

1989—Pub. L. 101–189, div. A, title XIV, § 1404(a)(2), Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, added item for subchapter III, effective Apr. 1, 1992.

1980—Pub. L. 96–513, title V, § 511(54)(A), Dec. 12, 1980, 94 Stat. 2925, amended chapter heading to read: ''ANNUITIES BASED ON RETIRED OR RETAINER PAY''.

1972—Pub. L. 92–425, § 1(1), Sept. 21, 1972, 86 Stat. 706, added subchapter analysis and amended chapter heading by inserting ''; SURVIVOR BENEFIT PLAN'' after ''PAY'' which could not be executed as directed in view of amendment by Pub. L. 87–381.

1961—Pub. L. 87–381, § 1(1), Oct. 4, 1961, 75 Stat. 810, substituted ''RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN'' for ''ANNUITIES BASED ON RETIRED OR RETAINER PAY'' in chapter heading.

CROSS REFERENCES

Exclusion from gross income, see sections 72, 101, and 122 of Title 26, Internal Revenue Code.

Exemption for levy for collection of taxes, see section 6334 of Title 26.

Repayment of retired pay by beneficiary, see section 8317 of Title 5, Government Organization and Employees.

Retired pay defined, see section 8311 of Title 5.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1408, 1461, 1463 of this title; title 5 sections 5531, 8311, 8317; title 26 sections 72, 101, 122, 6334; title 33 section 857a; title 38 section 5301; title 42 section 213a.

SUBCHAPTER I—RETIRED SERVICE- MAN'S FAMILY PROTECTION PLAN

Sec.	
1431.	Election of annuity: members of armed forces.
1432.	Election of annuity: former members of armed forces.
1433.	Mental incompetency of member.
1434.	Kinds of annuities that may be elected.
1435.	Eligible beneficiaries.
1436.	Computation of reduction in retired pay; withdrawal for severe financial hardship.
1437.	Payment of annuity.
1438.	Deposits for amounts not deducted.
1439.	Refund of amounts deducted from retired pay.
1440.	Annuities not subject to legal process.
1441.	Annuities in addition to other payments.
1442.	Recovery of annuity erroneously paid.
[1443.	Repealed.]
1444.	Regulations; determinations.
1444a.	Regulations regarding payment of annuity to a representative payee.
1445.	Correction of administrative deficiencies.
1446.	Restriction on participation.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title VI, § 654(b)(2), Dec. 5, 1991, 105 Stat. 1390, added item 1444a.

1972—Pub. L. 92–425, § 1(2)(B), (C), Sept. 21, 1972, 86 Stat. 706, struck out item 1443 ''Board of Actuaries'', and struck out ''reports to Congress'' from item 1444.

1961—Pub. L. 87–381, § 6(2), (3), Oct. 4, 1961, 75 Stat. 812, inserted ''; withdrawal for severe financial hardship'' in item 1436, and added items 1445 and 1446.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 1315.

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 1376(a)[1] of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before

[1] See References in Text note below.

the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(11), 72 Stat. 1565; Oct. 4, 1961, Pub. L. 87–381, § 2, 75 Stat. 810; Aug. 13, 1968, Pub. L. 90–485, § 1(1), (2), 82 Stat. 751; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(55), 94 Stat. 2925; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1301(a)(2), 99 Stat. 735; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1431(a)	37:371 (less (e) and (f)).	Aug. 8, 1953, ch. 393, §§ 2 (less (e) and (f)), 3(a) (less 5th sentence), (b), 67 Stat. 501, 502; Apr. 29, 1954, ch. 176, 68 Stat. 64.
1431(b).	37:372(a) (2d sentence). 37:372(a) (less 2d, 5th, 6th, and last sentences). 37:372(b) (less last sentence).	
1431(c)	37:372(a) (6th and last sentences).	
1431(d)	37:372(b) (last sentence).	

In subsection (a), the language of the revised subsection is substituted for 37:371(b) and (c), to make clear that the section was intended to include enlisted members and members of the Army, or the Air Force, without component. The words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (68 Stat. 47). The words ''retirement pay'' are omitted as covered by the words ''retired pay''. The words ''equivalent pay'' are omitted as surplusage. 37:371(c) (less 1st 21 words) is omitted as executed, since the persons described must have completed 18 years of the required service on the effective date of the source statute and exercised the option by 180 days after that date. 37:371(a) is omitted, since the revised chapter applies only to the armed forces. 37:371(d) is omitted, since the words ''person entitled to retired or retainer pay'', or their equivalent, are used throughout the revised chapter. 37:371(g) is omitted, since the words ''retired or retainer pay'' are used throughout the revised chapter. 37:371(h) is omitted as unnecessary in view of the definitions contained in section 101(5), (7), and (8). 37:372(a) (2d sentence) is omitted as surplusage.

In subsection (b), 37:372(a) (last 28 words of 1st sentence) is omitted as covered by section 1434 of this title. The words ''or naval'' are omitted as covered by the word ''military''. The last sentence is substituted for 37:372(a) (4th sentence, less 61st through 81st words). 37:372(a) (3d sentence, and 61st through 85th words of 4th sentence) and 37:372(b) (less last sentence) are omitted as executed.

In subsection (c), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''his retirement'' and ''he retires'' since, under sections 1331–1333 of this title, a person may be granted retired pay without having been retired. The last eight words are substituted for 37:372(a) (7th through 17th words of last sentence). 37:372(a) (last sentence, less 1st 17 words) is omitted as surplusage.

1958 ACT

The change makes clear that section 1431 applies to a person who, because of military operations, is missing under any circumstances.

REFERENCES IN TEXT

Section 1376(a) of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 103–337, div. A, title XVI, § 1662(k)(3), Oct. 5, 1994, 108 Stat. 3006. See section 12774(a) of this title.

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (b)(3). Pub. L. 99–145 substituted ''surviving spouse'' for ''widow''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''August 13, 1968,'' for ''the date of enactment of this amendment''.

1968—Subsec. (b). Pub. L. 90–485, § 1(1), increased from eighteen to nineteen the number of years of service the

annuitant must complete, decreased from three to two years before eligibility the time required to make an election, and inserted provisions that an election made after Aug. 13, 1968 will not be effective if the conditions of cls. (1) to (3) are satisfied.

Subsec. (c). Pub. L. 90–485, § 1(2), decreased from three to two years before the first day for which retired or retainer pay is granted the time required to change or revoke an election when the ground of restored mental competency is not present, inserted provision that any change or revocation in an election after the completion of 19 years of service is effective if made before the first day for which retired or retainer pay is granted, and provided for a change or revocation in an election before the first day for which retired or retainer pay is granted when there is a change in marital or dependency status, if such change or revocation of election is made within two years of such change in marital or dependency status.

1961—Subsec. (a). Pub. L. 87–381 substituted ''other than a list maintained under section 1376(a) of this title'' for ''or who are in the Retired Reserve'', redesignated pars. (4) and (5) as (2) and (3), and struck out former pars. (2) and (3) which related to reserves on an inactive status list, and members assigned to the inactive National Guard, respectively.

Subsec. (b). Pub. L. 87–381 required that unless the election is made before 18 years of service, it must be made at least three years before the first day for which retired or retainer pay is granted, inserted assignment to an isolated station among the reasons permitting a delayed election, changed the period within which to make such delayed election from within six months after return to the jurisdiction of his armed force, to within one year after he ceases to be assigned to the isolated station or his return to the jurisdiction of his armed force, and if the member is retroactively granted retired or retainer pay, and is eligible for an election, he may elect within 90 days after notice of such grant.

Subsec. (c). Pub. L. 87–381 substituted ''the first day for which retired or retainer pay is granted'' for ''his retirement or before he becomes entitled to retired or retainer pay'', the requirement that the change or revocation is not effective if made less than 3 years before the first day for which retired or retainer pay is granted, for a required period of five years after change or revocation before retirement or becoming entitled to retired or retainer pay, and deleted ''If he revokes the election, he may not change or withdraw the revocation.''

Subsec. (d). Pub. L. 87–381 substituted permission to make a corrected election within 90 days after notice that the election is void for any reason, except fraud or willful intent of the member making election, with such election effective as of the date of the election it replaces, for provisions which denied the ability to revoke any election by a person retired or granted retired or retainer pay before Nov. 1, 1953, and who elected within 180 days after that date to receive reduced pay to provide for an annuity.

1958—Subsec. (b). Pub. L. 85–861 struck out ''in action'' after ''he is missing''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–485 provided in part that: ''Clause (1) and clause (6) of section 1 [amending this section and section 1436 of this title], and sections 2, 3, and 4 of this Act [amending section 1331 [now 12731] of this title and enacting material set out as notes under this section] are effective on the date of enactment [Aug. 13, 1968]. Remaining provisions of this Act [amending this section and sections 1434, 1435, 1437, and 1446 of this title, and enacting provisions set out as a note under this section] are effective on the first day of the third calendar month following the date of enactment.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–397, Sept. 30, 1978, 92 Stat. 843, provided: ''That this Act [amending sections 1076, 1331 [now 12731], 1434, and 1447 to 1452 of this title and enacting provisions set out as notes under sections 1076, 1434, 1447, and 1448 of this title] may be cited as the 'Uniformed Services Survivors' Benefits Amendments of 1978'.''

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Section 3 of Pub. L. 90–485 provided that: ''For members to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968], the provisions of section 1434(c) of that title, as amended by this Act [section 1(3) of Pub. L. 90–485] are effective immediately and automatically''.

ELECTION OF ANNUITY MADE PRIOR TO AUGUST 13, 1968

Section 4 of Pub. L. 90–485 provided that: ''A retired member who elected an annuity under chapter 73 of title 10, United States Code [this chapter], before the date of enactment of this Act [Aug. 13, 1968], but did not make the election that was then provided by section 1434(c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444(a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are $25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed $25. No amounts by which a member's retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436(b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title.''

ELECTIONS SUBJECT TO COST TABLES APPLICABLE ON DATE OF RETIREMENT; ANNUITIES PAYABLE TO BENEFICIARIES ELIGIBLE UNDER LAW IN EFFECT THE DAY PRIOR TO AUGUST 13, 1968

Section 5 of Pub. L. 90–485 provided, effective on the first day of the third calendar month following Aug. 13, 1968, that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], elections in effect on the date of enactment [Aug. 13, 1968] will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act.''

APPLICABILITY OF PROVISIONS IN EFFECT ON THE DAY PRIOR TO AUGUST 13, 1968

Section 6 of Pub. L. 90–485 provided in part that: ''Notwithstanding any other provision of this Act [see

Effective Date of 1968 Amendment note set out above], any member to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968] may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431(b) or (c) of title 10, United States Code [subsec. (b) or (c) of this section] as in effect on the day before the date of enactment of this Act.''

INTERIM AUTHORITY FOR SELECTION OF COMMANDERS AND CAPTAINS FOR CONTINUATION ON ACTIVE DUTY

Section 3(q) of Pub. L. 88–130 rendered election, change, or revocation of election under this section effective if made prior to the convening date of the board which considers Coast Guard commanders and captains for continuation.

CHANGE OR REVOCATION OF AN ELECTION FILED PRIOR TO OCTOBER 4, 1961

Section 7 of Pub. L. 87–381 provided that: ''Any person who, before the date of enactment of this Act [Oct. 4, 1961], has filed a change or revocation, subject to section 1431(c) of title 10, United States Code [subsec. (c) of this section], of an election made under section 1431(b) of that title [subsec. (b) of this section], which change or revocation would be ineffective if the first day for which retired or retainer pay is granted were to be the date of enactment of this Act [Oct. 4, 1961], shall have that change or revocation become effective on that date, or three years after the date upon which it was filed, whichever is later.''

PROVISIONS APPLICABLE TO CERTAIN PERSONS RETIRING AFTER OCTOBER 4, 1961, FOR DISABILITY

Section 8 of Pub. L. 87–381 provided that: ''Any person who—

''(1) made an election before the date of enactment of this Act [Oct. 4, 1961], which would be effective if he retired on the day before such date; and

''(2) hereafter retires for physical disability before completing 18 years of service for which he is entitled to credit in the computation of his basic pay—

shall be considered as having applicable to him all of the provisions of chapter 73 of title 10, United States Code [this chapter], existing on the date preceding the date of enactment of this Act [Oct. 4, 1961], except that any revocation or change of an election is not effective until three years after the date of filing such revocation or change, or the date of enactment of this Act [Oct. 4, 1961], whichever is later.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN COLONELS AND LIEUTENANT COLONELS

Pub. L. 86–616, §11, July 12, 1960, 74 Stat. 396, provided that: ''Notwithstanding section 1431 of title 10, United States Code [this section], a change or revocation of an election made under that section by an officer who is retired under section 10 of this Act [set out as a note under section 3297 of this title] is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3916, 3921, 8916, or 8921 of title 10, as appropriate.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS OF REGULAR NAVY AND REGULAR MARINE CORPS

Pub. L. 86–616, §13, July 12, 1960, 74 Stat. 396, provided that: ''An officer who has been considered but not recommended for continuation on the active list under section 1 of the Act of August 11, 1959. Public Law 86–155 (73 Stat. 333) [set out as a note under section 5701 of this title], and who retired or retires voluntarily before the second day of the month following the month in which this Act is enacted [July 1960], may, within six months following the enactment of this Act [July 12, 1960], affirm a change or revocation of an election made under section 1431 of title 10, United States Code [this section], before his retirement, if the change or revocation would have been effective under section 3 of the Act of August 11, 1959, Public Law 86–155, as amended by this Act [set out as a note under section 5701 of this title], but for his voluntary retirement. If an officer takes no action under this section, his currently valid election under section 1431 of title 10, United States Code [this section], shall remain unchanged. The computation of the revised reduction in retired pay in the case of an officer who affirms a change of election under this section shall be in accordance with section 1436 of title 10, United States Code, and according to the conditions that existed on the day the officer became eligible for retired pay. An affirmation or revocation made under this section is effective on the first day of the month in which made. No refund may be made and no additional payment may be required with respect to any period before that date.''

ELECTION OF ANNUITY BY CERTAIN PERSONNEL

Pub. L. 86–197, §4, Aug. 25, 1959, 73 Stat. 426, provided that: ''Any person who, on the effective date of this Act [August 25, 1959], would not have completed 18 years of service for which he is entitled to credit in the computation of his basic pay under the laws in effect prior to the effective date of this Act, and who, as a result of the enactment of this Act [amending sections 1332 [now 12732], 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 3441 and 12732 of this title], is credited with more than 17 years of such service, shall be allowed twelve months from the effective date of this Act to make the election provided by section 1431(b) of title 10, United States Code [subsection (b) of this section], notwithstanding the requirement of the second sentence of that section.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS

Effective date of change or revocation of election by certain officers, see section 3 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 336, set out as a note under section 5701 of this title.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

CROSS REFERENCES

Forfeiture of annuities and retired pay, see section 8311 et seq. of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1432, 1433, 1434 of this title.

§1432. Election of annuity: former members of armed forces

A person who was a former member of an armed force on November 1, 1953, and who is

granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1432	37:372(a) (5th sentence).	Aug. 8, 1953, ch. 393, § 3(a) (5th sentence), 67 Stat. 502.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434 of this title.

§ 1433. Mental incompetency of member

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Department of Veterans Affairs or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deductions made from his retired or retainer pay before that date may not be refunded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1433	37:372 (less (a) and (b)).	Aug. 8, 1953, ch. 393, § 3 (less (a) and (b)), 67 Stat. 502.

The first 19 words are substituted for 37:372(c) (1st 9 words). The words ''who would be eligible to be made beneficiaries under section 1435 of this title'' are inserted to reflect the limitations in 37:371(f). The words ''for that reason cannot'' are substituted for the words ''because of such mental incompetency is incapable of''. The words ''or is adjudged mentally incompetent'', ''provided for in this section'', and ''where appropriate is subsequently adjudged mentally competent'' are omitted as surplusage. The last sentence is substituted for 37:372(c) (last sentence).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431 of this title.

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 percent nor less than 12½ percent of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 percent nor less than 12½ percent of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse.

(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Oct. 4, 1961, Pub. L. 87–381, § 3, 75 Stat. 811; Aug. 13, 1968, Pub.

L. 90–485, § 1(3), 82 Stat. 751; Sept. 30, 1978, Pub. L. 95–397, title I, § 101(a), 92 Stat. 843; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(56), 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1434(a)	37:373(a) (less 4th par.).	Aug. 8, 1953, ch. 393, § 4 (less (c) and (d)), 67 Stat. 502.
1434(b)	37:373(b).	
1434(c)	37:373(a)(4th par.).	

In subsection (a), the first 17 words are substituted for 37:373(a) (1st 26 words of 1st sentence). The words ''may be 50, 25, or 12½ percent'' are substituted for the words ''in such amount, expressed as a percentage of the reduced amount of his retired pay * * * in amounts equal to one-half, one-quarter or one-eighth''. 37:373(a) (last 53 words of 1st sentence of 2d par., and last 53 words of 1st sentence of 3d par.) is omitted as covered by section 1435(2) of this title. Clause (1) is substituted for 37:373(a)(1). Clause (2) is substituted for 37:373(a)(2) (less last 53 words of 1st sentence). Clause (3) is substituted for 37:373(a)(3) (less last 53 words of 1st sentence). The word ''eligible'' is inserted in clauses (2) and (3) to reflect the limitations in 37:371(f).

In subsection (c), the first 11 words are substituted for 37:373(a)(4) (1st 24 words). The words ''the annuity'' are substituted for the words ''an annuity payable under the election made by him''.

AMENDMENTS

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''percent'' for ''per centum'' wherever appearing.

1978—Subsec. (a)(1). Pub. L. 95–397, § 101(a)(1), substituted ''or, if the spouse remarries before age 60, when the spouse remarries'' for ''or remarries''.

Subsec. (a)(3). Pub. L. 95–397, § 101(a)(2), substituted ''of that spouse or the remarriage of that spouse before age 60'' for ''or remarriage of that spouse''.

Subsec. (e). Pub. L. 95–397, § 101(a)(3), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–485 substituted provisions allowing election of an annuity amount, in conformance with the selected actuarial tables, of not more than 50 percent nor less than 12½ percent of retired or retired or retainer pay, but in no case less than $25, for provisions allowing election of an annuity amount of 50, 25, or 12½ percent of reduced retired or retainer pay.

Subsec. (b). Pub. L. 90–485 substituted provisions that the combined amount of annuities may not be more than 50 percent nor less than 12½ percent of retired or retainer pay, but in no case less than $25, for provisions that the combined amount of annuities may be only 25 or 12½ percent of reduced retired or retainer pay and provisions that the reduction in retired or retainer pay on account of each annuity, and the amount of each annuity, be determined in the same manner that it would be determined if the other annuity had not been elected.

Subsec. (c). Pub. L. 90–485 made mandatory the provisions that an election of any annuity under cls. (1) or (2) of subsec. (a), or any combination of annuities under subsec. (b), and the provision that an election of an annuity under cl. (3) of subsec. (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died or there is no eligible spouse because of death or divorce, respectively, and inserted provision determining what constitutes an eligible beneficiary.

Subsec. (d). Pub. L. 90–485 reenacted subsec. (d) without change.

1961—Subsec. (b). Pub. L. 87–381, § 3(1), substituted permission to elect only 25 or 12½ percent of the member's reduced retired or retainer pay for each annuity for provisions limiting the combined amount of the annuities to not more than 50 percent or the reduced pay, and added that the reduction in pay on account of each annuity, and the amount of each annuity, shall be determined as if the other annuity had not been elected.

Subsec. (d). Pub. L. 87–381, § 3(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(b) of Pub. L. 95–397 provided that: ''No benefits shall accrue to any person by virtue of the amendments made by subsection (a) [amending this section] for any period prior to the first day of the first calendar month following the month in which this Act is enacted [Sept. 1978] or October 1, 1978, whichever is later.''

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

INCREASE IN AMOUNT OF ANNUITY PAYABLE UNDER RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 102 of Pub. L. 95–397 provided that: ''Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of the enactment of this Act [Sept. 30, 1978] to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act [See Short Title note set out under section 1431 of this title] is enacted [September 1978], or as of October 1, 1978, whichever is later, by the percentage increase in retired and retainer pay under section 1401a of that title since September 21, 1972.''

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Provisions of this section as amended by Pub. L. 90–485 effective immediately and automatically for members to whom section 1431 of this title applies on Aug. 13, 1968, see section 3 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 1436 of this title.

§ 1435. Eligible beneficiaries

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this subchapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

For the purposes of clause (2)(B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bonafide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Aug. 13, 1968, Pub. L. 90–485, § 1(4), (5), 82 Stat. 752; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1435(1)	37:371(e).	Aug. 8, 1953, ch. 393,
1435(2)	37:371(f).	§ 2(e), (f), 67 Stat. 501.

In clauses (1) and (2), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''retired member'', since the words ''retired member'', as defined in the source statute, included former members who have been awarded that pay.

In clause (1), the words '' 'widow' includes a widower'' are omitted as covered by the definition of ''spouse'' in section 101(32) of this title.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 inserted provisions in cl. (2)(B) concerning children of the member who are at least 18, but under 23 and pursuing a full-time course of study or training and inserted text following cl. (2)(E) relating to children considered to be pursuing a full-time course of study or training.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434, 1437 of this title.

§ 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship

(a) The reduction in the retired or retainer pay of any person who elects an annuity under this subchapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay but without regard to any increase in that pay to reflect changes in the Consumer Price Index. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

(2) to withdraw from participation in an annuity program under this title; or

(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.

A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Oct. 4, 1961, Pub. L. 87–381, § 4, 75 Stat. 811; Dec. 16, 1967, Pub. L. 90–207, § 2(a)(3), 81 Stat. 653; Aug. 13, 1968, Pub. L. 90–485, § 1(6), 82 Stat. 753; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1436	37:373(c).	Aug. 8, 1953, ch. 393, § 4(c), 67 Stat. 503.

The words ''of any person who elects an annuity'' are substituted for the words ''of an active or retired member who has made an election''. The words ''in each individual case'' and ''designated in section 8'' are omitted as surplusage. The words ''and as of the date of election in the case of a retired member'' are omitted as executed. 37:373(c) (1st 23 words of last sentence) is omitted as otherwise covered by the language of the revised section.

CODIFICATION

Provisions following cl. (4) of subsec. (b) have been included in the text of subsec. (b) since this appears to be the intent of Congress, even though section 1(6) of Pub. L. 90–485 placed within the quotation marks setting off the amended subsec. (b) only the material to the end of cl. (4).

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Subsec. (b). Pub. L. 90–485 substituted provisions authorizing the Secretary to allow the member to reduce the amount of the annuity, allow the member to withdraw from participation in an annuity program, allow the member to elect the annuity provided in section 1434(a)(1) in place of the annuity provided in section 1434(a)(3) under the specified conditions, and allow the member to elect that a child at least 18, but under 23, not be eligible for the specified annuities, setting forth the times when such reduction, withdrawal, or change of election may take place, and disallowing the refunding or crediting of any amount previously withheld, for provisions authorizing the Secretary to allow the member to withdraw from participation in an annuity program whenever the Secretary considers it necessary because of the member's severe financial hardship, the absence of an eligible beneficiary not of itself to be a basis for such action.

1967—Subsec. (a). Pub. L. 90–207 inserted ''but without regard to any increase in that pay to reflect changes in the Consumer Price Index'' after ''that pay''.

1961—Pub. L. 87–381 designated existing provisions as subsec. (a), added subsec. (b), and inserted ''; withdrawal for severe financial hardship'' in section catchline.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1434 of this title.

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month before November 1, 1968.

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Aug. 13, 1968, Pub. L. 90–485, § 1(7), 82 Stat. 753; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(57), 94 Stat. 2925; Sept. 24, 1983, Pub. L. 98–94, title IX, § 922(a)(14)(A), 97 Stat. 642; Oct. 19, 1984, Pub. L. 98–525, title VI, § 642(a)(1), 98 Stat. 2545; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(9), 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1437	37:379.	Aug. 8, 1953, ch. 393, § 10, 67 Stat. 504.

The words ''the person upon whose reduced pay the annuity is based'' are substituted for the words ''the retired member'' since persons other than retired members may elect an annuity. The words ''due and'' and ''or be paid'' are omitted as surplusage.

AMENDMENTS

1985—Subsec. (c)(3)(A). Pub. L. 99–145 struck out ''(notwithstanding section 144 of this title)'' after ''which''.

1984—Subsec. (a). Pub. L. 98–525, § 642(a)(1)(A), substituted ''subsections (b) and (c),'' for ''subsection (b)''.

Subsec. (c). Pub. L. 98–525, § 642(a)(1)(B), added subsec. (c).

1983—Subsec. (a). Pub. L. 98–94 inserted ''The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

1980—Subsec. (b). Pub. L. 96–513 substituted ''before November 1, 1968'' for ''prior to the effective date of this subsection''.

1972—Subsec. (a). Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 designated existing provisions as subsec. (a), inserted ''Except as provided in subsection (b)'', substituted ''whose pay'' for ''whose reduced pay'', and added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1440 of this title.

§ 1438. Deposits for amounts not deducted

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this subchapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1438	37:374.	Aug. 8, 1953, ch. 393, § 5, 67 Stat. 504.

The words ''a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter'' are substituted for the words ''a retired member of a uniformed service who has made the election specified in section 372 of this title'', since the revised chapter applies to persons who are receiving retired pay as well as retired members. The word ''otherwise'' is substituted for the words ''had he been receiving that pay''. The words ''to provide the annuity'' are inserted for clarity.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

CROSS REFERENCES

Exclusion from gross income, see section 122 of Title 26, Internal Revenue Code.

Refund of deposit, see section 8316 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 8311, 8316; title 26 section 122.

§ 1439. Refund of amounts deducted from retired pay

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this subchapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1439	37:373(d).	Aug. 8, 1953, ch. 393, § 4(d), 67 Stat. 503.

The words ''person whose name is on'' are substituted for the words ''Any active member or former member on the''. The words ''is entitled to a refund'' are substituted for the words ''shall have refunded to him''. The words ''permanent'', ''a sum which represents'', and ''in accordance with his election under section 372 of this title'' are omitted as surplusage. The words ''retirement or grant of retired pay'' are substituted for

the words ''permanent retirement'', since under chapter 67 of this title a member of the Army or Air Force may be granted retired pay without being retired.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706; Oct. 19, 1984, Pub. L. 98–525, title VI, § 642(a)(2), 98 Stat. 2546; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(10), 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1440	37:378.	Aug. 8, 1953, ch. 393, § 9, 67 Stat. 504.

The words ''either in law or equity'' are omitted as surplusage.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''1437(c)(3)(B)'' for ''1437(c)(3)''.

1984—Pub. L. 98–525 substituted ''Except as provided in section 1437(c)(3) of this title, no'' for ''No''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

§ 1441. Annuities in addition to other payments

An annuity under this subchapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Department of Veterans Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 2, 1958, Pub. L. 85–857, § 13(v)(1), 72 Stat. 1266; Sept. 2, 1958, Pub. L. 85–861, § 1(31B), 72 Stat. 1452; Aug. 29, 1959, Pub. L. 86–211, § 8(a), 73 Stat. 436; Dec. 24, 1970, Pub. L. 91–588, § 8(b), 84 Stat. 1584; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1441	37:380.	Aug. 8, 1953, ch. 393, § 11, 67 Stat. 504.

The word ''is'' is substituted for the words ''may now or hereafter be''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1441	37:380.	Aug. 1, 1956, ch. 837, § 501(1), 70 Stat. 884.

The change is made to reflect the amendment made by section 501(1) of the Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 884) to section 11 of the Uniform Services Contingency Option Act of 1953 (restated in section 1441 of title 10).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1970—Pub. L. 91–588 struck out ''except section 415(g) and chapter 15 of title 38'' after ''Veterans' Administration''.

1959—Pub. L. 86–211 inserted reference to chapter 15 of title 38.

1958—Pub. L. 85–861 inserted ''except section 1115 of title 38'' after ''Administration''.

Pub. L. 85–857 substituted ''section 415(g) of title 38'' for ''section 1115 of title 38''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–588 effective Jan. 1, 1971, see section 10 of Pub. L. 91–588, set out as a note under section 1521 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–211 effective July 1, 1960, see section 10 of Pub. L. 86–211, set out as a note under section 1506 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1446 of this title.

§ 1442. Recovery of annuity erroneously paid

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1442	37:376.	Aug. 8, 1953, ch. 393, § 7, 67 Stat. 504.

The words ''In addition to other methods of recovery provided by law, the Secretary concerned may'' are substituted for 37:376(a) (1st 15 words of 1st sentence). The words ''from later payments to an annuitant'' are substituted for 37:376(a) (2d sentence).

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

[§ 1443. Repealed. Pub. L. 92–425, § 1(2)(B), Sept. 21, 1972, 86 Stat. 706]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 111, related to Board of Actuaries, composed of Government

Actuary, Chief Actuary of Social Security Administration, and an actuary who was a member of Society of Actuaries.

§ 1444. Regulations; determinations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

(b) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this subchapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Oct. 4, 1961, Pub. L. 87–381, § 5, 75 Stat. 811; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Sept. 21, 1972, Pub. L. 92–425, § 1(2)(A), (C), 86 Stat. 706; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(58), 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1444(a)	37:377 (1st sentence).	Aug. 8, 1953, ch. 393, §§ 6, 8 (1st and 2d sentences), 67 Stat. 504.
1444(b)	37:377 (2d sentence).	
1444(c)	37:375.	

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513, § 511(58)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsecs. (b), (c). Pub. L. 96–513, § 511(58)(B), redesignated subsec. (c) as (b).

1972—Pub. L. 92–425, § 1(2)(C), struck out ''reports to Congress'' in section catchline.

Subsec. (a). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

Subsec. (b). Pub. L. 92–425, § 1(2)(C), struck out subsec. (b) which required President to submit annual reports to Congress on administration of this chapter.

Subsec. (c). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1961—Subsec. (b). Pub. L. 87–381 required report to contain a detailed account, including an actuarial analysis, of cases in which relief is granted under sections 1436(b) and 1552 of this title, or any other statutory or administrative procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1436, 1437, 1444a, 1445 of this title.

§ 1444a. Regulations regarding payment of annuity to a representative payee

(a) The regulations prescribed pursuant to section 1444(a) of this title shall provide procedures for the payment of an annuity under this subchapter in the case of—

(1) a person for whom a guardian or other fiduciary has been appointed; and

(2) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(b) Those regulations may include the provisions set out in section 1455(c) of this title.

(c) An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to subsection (a) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 102–190, div. A, title VI, § 654(b)(1), Dec. 5, 1991, 105 Stat. 1390.)

§ 1445. Correction of administrative deficiencies

Whenever he considers it necessary, the Secretary concerned may, under regulations prescribed under section 1444(a) of this title, correct any election, or any change or revocation of an election, under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1446. Restriction on participation

(a) Notwithstanding section 1441 of this title, if a person—

(1) has made an election under this subchapter; and

(2) is retired for physical disability before he completes 19 years of service for which he is entitled to credit in the computation of his basic pay;

and thereafter dies, his beneficiaries are not entitled to the annuities provided under this subchapter until they give proof to the department concerned that they are not eligible for benefits under chapter 11 or 13 of title 38. If the beneficiaries are not eligible for benefits under chapter 11 or 13 of title 38, the annuity shall begin on the first day of the month in which the death occurs.

(b) Whenever the beneficiaries on whose behalf the election was made are restricted, under subsection (a), from participating in the annuities provided under this subchapter, the amount withheld from the elector's retired or retainer pay as a result of an election under this subchapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this subchapter, and in either case without interest.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 90–485, § 1(8), Aug. 13, 1968,

82 Stat. 754; Pub. L. 92–425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter'' wherever appearing.

1968—Subsec. (a)(2). Pub. L. 90–485 substituted ''19'' for ''18''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.
1447. Definitions.
1448. Application of Plan.
1449. Mental incompetency of member.
1450. Payment of annuity: beneficiaries.
1451. Amount of annuity.
1452. Reduction in retired pay.
1453. Recovery of annuity erroneously paid.
1454. Correction of administrative errors.
1455. Regulations.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title XIV, §1407(a)(10)(B), Nov. 29, 1989, 103 Stat. 1589, substituted ''errors'' for ''deficiencies'' in item 1454.

1985—Pub. L. 99–145, title VII, §719(8)(B), Nov. 8, 1985, 99 Stat. 676, struck out ''or retainer'' after ''retired'' in item 1452.

1972—Pub. L. 92–424, §1(3), Sept. 21, 1972, 86 Stat. 706, added subchapter II heading and items 1447 to 1455.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1076, 1460a, 12731 of this title.

§1447. Definitions

In this subchapter:

(1) The term ''Plan'' means the Survivor Benefit Plan established by this subchapter.

(2) The term ''base amount'' means—

(A) in the case of a person who dies after becoming entitled to retired pay, the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list;

(B) in the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title; or

(C) any amount which is less than the amount otherwise applicable under clause (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before (i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or (ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

(3) The term ''widow'' means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage.

(4) The term ''widower'' means the surviving husband of a person who, if not married to the person at the time she became eligible for retired pay—

(A) was married to her for at least one year immediately before her death; or

(B) is the father of issue by that marriage.

(5) The term ''dependent child'' means a person who is—

(A) unmarried;

(B) (i) under 18 years of age; (ii) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (iii) incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred on or after that birthday, but before his twenty-second birthday, while pursuing such a full-time course of study or training; and

(C) the child of a person to whom the Plan applies, including (i) an adopted child, and (ii) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

For the purpose of this paragraph, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if he shows to the satisfaction of the Secretary of Defense that he has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim. Under this para-

graph, a foster child, to qualify as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while he is a student as described in this paragraph, will not be considered to affect the residence of such a foster child.

(6) The term ''former spouse'' means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(7) The term ''court'' has the meaning given that term by section 1408(a)(1) of this title.

(8) The term ''court order'' means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, or annulment or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(9) The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(10) The term ''regular on its face'', when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

(11) The term ''retired pay'' includes retainer pay paid under section 6330 of this title.

(12) The term ''standard annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(13) The term ''reserve-component annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(14) The term ''reserve-component retired pay'' means retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 706; amended Pub. L. 94–496, §1(1), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §201, Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–402, §2, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–252, title X, §1003(a), Sept. 8, 1982, 96 Stat. 735; Pub. L. 98–94, title IX, §941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99–145, title VII, §§719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; Pub. L. 99–348, title III, §301(a)(1), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, §1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–189, div. A, title XIV, §1407(a)(1)–(3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C)(i), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title XVI, §1671(d), Oct. 5, 1994, 108 Stat. 3014.)

REFERENCES IN TEXT

Chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in par. (14), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

AMENDMENTS

1994—Par. (2)(C). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Par. (14). Pub. L. 103–337, §1671(d)(1), substituted ''chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''chapter 67 of this title''.

1990—Par. (5). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, §1407(a)(1)(A), see 1989 Amendment note below.

1989—Par. (2)(B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Par. (2)(C)(i). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (2)(C)(ii). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Pars. (3), (4). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (5). Pub. L. 101–189, §1407(a)(1)(A), as amended by Pub. L. 101–510, substituted ''this paragraph'' for ''this clause'' in three places in concluding provisions.

Par. (11). Pub. L. 101–189, §1407(a)(1)(B), inserted ''paid under section 6330 of this title'' after ''retainer pay''.

Par. (14). Pub. L. 101–189, §1407(a)(1)(C), added par. (14).

1987—Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in pars. (2) to (13) to make initial letter of such word lowercase.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''retired pay'' for ''retired or retainer pay'' in two places in provisions preceding cl. (i).

Pub. L. 99–348 inserted ''(determined without regard to any reduction under section 1409(b)(2) of this title)''.

1985—Par. (2)(C). Pub. L. 99–145, §721(b), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''designated by the person''.

Par. (2)(C)(i). Pub. L. 99–145, §719(2)(A), substituted ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''.

Par. (2)(C)(ii). Pub. L. 99–145, §719(2)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pars. (11) to (13). Pub. L. 99–145, §719(1), added pars. (11) to (13).

1983—Par. (8). Pub. L. 98–94 substituted ''or annulment'' for ''annulment, or legal separation,'' in two places.

1982—Pars. (6) to (10). Pub. L. 97–252 added pars. (6) to (10).

1980—Par. (2). Pub. L. 96–402 inserted in subpar. (C) ''but which is not less than $300'' after ''under the Plan'', substituted a period at end of subpar. (C) for '', but not less than $300;'', and struck out following subpar. (C) ''as increased from time to time under section 1401a of this title.''

1978—Par. (2). Pub. L. 95–397 inserted ''in the case of a person who dies after becoming entitled to retired or retainer pay'' before ''the amount'' and substituted ''pay to which the person'' for ''pay to which a person'' in subpar. (A), substituted ''in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly re-

tired pay for which the person would have been eligible—'' for ''any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than $300'' in subpar. (B), and added subpars. (B)(i), (ii) and (C).

1976—Pars. (3)(A), (4)(A). Pub. L. 94–496 substituted ''one year'' for ''two years''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(*l*)(4)(C) of Pub. L. 101–510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 731 of title VII of Pub. L. 99–145 provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1985 Amendment note below] shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 8, 1985].

''(b) PROSPECTIVE BENEFITS ONLY.—No benefit shall accrue to any person by reason of the enactment of this title for any period before the effective date under subsection (a).''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–402 provided that: ''The amendments made by sections 2, 3, and 4 of this Act [amending this section and sections 1451 and 1452 of this title] and the provisions of section 5 of this Act [set out as a note under section 1448 of this title] shall be effective on the first day of the second calendar month following the month in which this Act is enacted [October 1980] and shall apply to annuities payable by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act [Pub. L. 96–402] for any period before the date of the enactment of this Act [Oct. 9, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210 of title II of Pub. L. 95–397 provided that:

''(a) Except as provided in subsection (b), the provisions of this title [amending this section and sections 1331 [now 12731] and 1448 to 1452 of this title and enacting provisions set out as notes under this section and section 1448 of this title] and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

''(b) The amendment made by section 206 [amending section 1331 [now 12731] of this title] shall apply to notifications under section 1331(d) [now 12731(d)] of title 10, United States Code, after the date of the enactment of this Act [Sept. 30, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of Pub. L. 94–496 provided that: ''This Act [amending this section and sections 1448, 1450, 1451, and 1452 of this title, and amending provisions set out as a note under section 1448 of this title] shall be effective as of September 21, 1972. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.''

SHORT TITLE OF 1989 AMENDMENT

Section 1401 of title XIV of Pub. L. 101–189 provided that: ''This title [enacting subchapter III of this chapter, amending this section and sections 1331 [now 12731], 1448 to 1452, and 1454 of this title and section 3101 [now 5301] of Title 38, Veterans' Benefits, and enacting provisions set out as notes under sections 1448, 1451, 1452, 1456, and 12731 of this title] may be cited as the 'Military Survivor Benefits Improvement Act of 1989'.''

SHORT TITLE OF 1985 AMENDMENT

Section 701 of title VII of Pub. L. 99–145 provided that: ''This title [amending this section and sections 1448, 1450 to 1452, and 1455 of this title, enacting provisions set out as notes under this section and sections 1448 and 1452 of this title, and repealing a provision set out as a note under section 1451 of this title] may be cited as the 'Survivor Benefit Plan Amendments of 1985'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–402 provided: ''That this Act [amending this section and sections 1451 and 1452 of this title, enacting provisions set out as notes under this section and section 1448 of this title, and amending provisions set out as a note under section 1448 of this title] may be cited as the 'Uniformed Services Survivor Benefits Amendments of 1980'.''

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

Section 208 of Pub. L. 95–397, as amended by Pub. L. 96–107, title VIII, §816, Nov. 9, 1979, 93 Stat. 818, provided that: ''With respect to any individual who—

''(1) would be eligible for retired pay under chapter 67 [now 1223] of title 10, United States Code, on the effective date of this title [see Effective Date of 1978 Amendment note set out above] but for the fact that such individual is under 60 years of age; or

''(2) receives, before January 1, 1980, a notification that such individual has completed the years of service required for eligibility for such retired pay;

the 90-day period referred to in section 1447(2)(C) of title 10, United States Code (as amended by section 201 of this Act), and in sections 1448(a)(2) and 1448(a)(4)(B) of title 10, United States Code (as amended by section 202(a) of this Act) shall be considered to end on March 31, 1980.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078a, 1456 of this title.

§1448. Application of Plan

(a)(1) The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) The Plan applies—

(A) to a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay; and

(B) to a person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.

A person described in subclauses (i) and (ii) of clause (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in such clause shall remain eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3)(A) A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) A married person who elects to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) to provide an annuity for the person's spouse at less than the maximum level; or

(ii) to provide an annuity for a dependent child but not for the person's spouse.

(C) A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4)(A) An election under paragraph (2)(A) not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) An election under paragraph (2)(B) to participate in the Plan is irrevocable if not revoked before the end of the 90-day period referred to in such paragraph.

(5) A person who is not married when he becomes eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan, but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries or acquires that dependent child. Such an election may not be revoked except in accordance with subsection (b)(3). His election is effective as of the first day of the first calendar month following the month in which his election is received by the Secretary concerned. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6)(A) A person—

(i) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child;

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) If such an election is made, no reduction in the retired pay of such person under section 1452 of this title may be made. An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(C) If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(D) This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b)(1)(A) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a).

(2) A person who has a former spouse when he becomes eligible to participate in the Plan may elect to provide an annuity to that former spouse. In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d). If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3)(A) A person—

(i) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(ii) who has a former spouse who was not that person's former spouse when he became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse. Any such election terminates any previous coverage under the Plan and must be written, signed by the person, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title and is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of that election.

(4) A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth (A) whether the election is being made pursuant to the requirements of a court order, or (B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d)(1) The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

(A) becoming eligible to receive retired pay;

(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.

(2) The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies.

(3) If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(e) In any case in which a person electing to participate in the Plan is required to make a

designation under this subsection, the person making such election shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on the day after the date of his death or on the 60th anniversary of his birth.

(f)(1) The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

(A) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(B) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan.

(2) The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.

(3) If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) The amount of an annuity under this subsection is computed under section 1451(c) of this title.''.

(g)(1) A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 707; amended Pub. L. 94–496, § 1(2), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, § 202, Sept. 30, 1978, 92 Stat. 844; Pub. L. 97–252, title X, § 1003(b), Sept. 8, 1982, 96 Stat. 735; Pub. L. 97–295, § 1(18), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title IX, § 941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99–145, title V, § 513(b), title VII, §§ 712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673–676; Pub. L. 99–661, div. A, title VI, §§ 641(b)(1), 642(a), title XIII, § 1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 101–189, div. A, title XIV, § 1407(a)(2), (3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 103–337, div. A, title VI, § 638, title XVI, § 1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015.)

AMENDMENTS

1994—Subsec. (a)(2)(B). Pub. L. 103–337, § 1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Subsec. (b)(1). Pub. L. 103–337, § 638, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (f)(1). Pub. L. 103–337, § 1671(d)(2), substituted ''12731(d)'' for ''1331(d)'' in subpars. (A) and (B).

1989—Subsec. (a)(1)(B), (2)(B). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (a)(4)(A). Pub. L. 101–189, § 1407(a)(3), struck out ''or retainer'' after ''entitled to retired''.

Subsec. (f)(1)(A), (B). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

1986—Subsec. (a)(5). Pub. L. 99–661, § 1343(a)(8)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under paragraph (1)(B)''.

Subsec. (b)(5). Pub. L. 99–661, § 641(b)(1), inserted ''(A) whether the election is being made pursuant to the requirements of a court order, or (B)''.

Subsec. (d)(2). Pub. L. 99–661, § 642(a)(1), substituted ''if there is no surviving spouse or if the member's surviving spouse subsequently dies'' for ''if the member and the member's spouse die as a result of a common accident''.

Subsec. (f)(2). Pub. L. 99–661, § 642(a)(2), substituted ''if there is no surviving spouse or if the person's surviving spouse subsequently dies'' for ''if the person and the person's spouse die as a result of a common accident''.

1985—Subsec. (a)(1)(A). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(2)(A). Pub. L. 99–145, § 721(a)(1), inserted ''(with his spouse's concurrence, if required under paragraph (3))'' after ''unless he elects''.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(3). Pub. L. 99–145, § 721(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for

a former spouse under subsection (b)(2), that person's spouse shall be notified of that election.

''(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that action.''

Subsec. (a)(6). Pub. L. 99–149, §715(a), added par. (6).

Subsec. (b)(1). Pub. L. 99–145, §719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Subsec. (b)(2). Pub. L. 99–145, §719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Pub. L. 99–145, §716(a)(1), inserted ''(other than a child who is a beneficiary under an election under paragraph (4))'' after ''that spouse or child'' in second sentence.

Subsec. (b)(3)(B). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (b)(4), (5). Pub. L. 99–145, §716(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99–145, §513(b), inserted ''disability'' before ''retired pay''.

Subsec. (d). Pub. L. 99–145, §712(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died.''

Subsec. (f). Pub. L. 99–145, §713(a), added subsec. (f).

Subsec. (g). Pub. L. 99–145, §715(b), added subsec. (g).

1983—Subsec. (a)(3). Pub. L. 98–94, §941(c)(2), substituted ''provide an annuity for a former spouse under subsection (b)(2),'' for ''provide an annuity under subsection (b)(2) of this section,'' in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 98–94, §941(a)(1), inserted ''except in accordance with subsection (b)(3)''.

Subsec. (b). Pub. L. 98–94, §941(a)(2), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows:

''(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse.

''(2) A person who is married, or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

''(3) In the case of a person electing to provide an annuity under paragraph (1) or (2) of this subsection by virtue of eligibility under subsection (a)(1)(B), the election shall include a designation under subsection (e).

''(4) Any person who elects under paragraph (1) or (2) to provide an annuity to a former spouse shall, at the time of making such election, provide the Secretary concerned with a written statement, in a form to be prescribed by that Secretary, signed by such person and the former spouse setting forth whether the election is being made pursuant to a voluntary written agreement previously entered into by such person as a part of or incident to a proceeding of divorce, dissolution, annulment, or legal separation, and if so, whether such voluntary written agreement has been incorporated in or ratified or approved by a court order.''

1982—Pub. L. 97–295, §1(18), substituted ''Plan'' for ''plan'' in section catchline.

Subsec. (a)(3). Pub. L. 97–252, §1003(b)(1), inserted in subpars. (A) and (B) identical text ''or elects to provide an annuity under subsection (b)(2) of this section,'' after ''for his spouse,''.

Subsec. (b). Pub. L. 97–252, §1003(b)(2), designated existing first sentence as par. (1), authorized an election to provide an annuity to a former spouse, added pars. (2) and (4), designated existing second sentence as par. (3), and substituted ''person electing to provide an annuity under paragraph (1) or (2) of this subsection'' for ''person providing an annuity under this subsection'' and ''the election'' for ''such an election''.

1978—Subsec. (a). Pub. L. 95–397, §202(a), amended subsec. (a) generally, primarily inserting provision that this subchapter shall be known as the Survivor Benefit Plan and provisions of pars. (1)(B), (2)(B) and concluding sentence, (3)(B), (4)(B), and last sentence of (5).

Subsec. (b). Pub. L. 95–397, §202(b), substituted ''entitled to retired or retainer pay'' for ''eligible to participate in the Plan'' and inserted provisions relating to the inclusion in an election a designation under subsection (e) by persons providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B).

Subsec. (e). Pub. L. 95–397, §202(c), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–496 inserted ''or elects to provide an annuity for a dependent child but not for his spouse'' after ''maximum level''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(d)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 641 of Pub. L. 99–661 applicable to court orders issued on or after Nov. 14, 1986, see section 641(c) of Pub. L. 99–661, set out as a note under section 1450 of this title.

Section 642(c) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims arising on or after March 1, 1986. The amendments made by subsection (b) [amending section 1451 of this title] shall apply to payments for periods after February 28, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 941(b) of Pub. L. 98–94 provided that: ''In the case of a person who on the date of the enactment of this Act [Sept. 24, 1983] is a person described in subparagraph (A) of subsection (b)(3) of section 1448 of title 10, United States Code (as amended by subsection (a)(2)), such subsection shall apply to that person as if the one-year period provided for in subparagraph (A) of such subsection began on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006

of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING APRIL 1, 1992

Section 1405 of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VI, § 631(2), title XIV, § 1484(*l*)(4)(B), Nov. 5, 1990, 104 Stat. 1580, 1720; Pub. L. 102–190, div. A, title VI, § 653(a)(1), (c)(2), Dec. 5, 1991, 105 Stat. 1388, 1389; Pub. L. 102–484, div. A, title VI, § 643, Oct. 23, 1992, 106 Stat. 2425, provided that:

''(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

''(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

''(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code, as added by section 1404.

''(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

''(A) is entitled to retired pay; or

''(B) would be entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

''(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

''(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

''(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

''(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period elect to—

''(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

''(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

''(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

''(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code, as added by section 1404.

''(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

''(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan will be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section. Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

''(d) MANNER OF MAKING ELECTIONS.—An election under this section must be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

''(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

''(f) OPEN ENROLLMENT PERIOD DEFINED.—The open enrollment period is the one-year period beginning on April 1, 1992.

''(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—(1) If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

''(2) Paragraph (1) does not apply in the case of the death of a person making an election under subsection (a) if the beneficiary of that person under the election is the person's spouse and that spouse was entitled, before November 1, 1990, to receive dependency and indemnity compensation benefits from the Department of Veterans Affairs based on a previous marriage to another member or former member of the uniformed services.

''(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

''(i) REPORT CONCERNING OPEN SEASON.—Not later than June 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the open season authorized by this section for the Survivor Benefit Plan. The report shall include—

''(1) a description of the Secretary's plans for implementation of the open season;

''(2) the Secretary's estimates of the costs associated with the open season, including any anticipated effect of the open season on the actuarial status of the Department of Defense Military Retirement Fund; and

''(3) any recommendation by the Secretary for further legislative action.

''(j) ADDITIONAL PREMIUM.—The Secretary of Defense may require that the SBP premium for a person making an election under subsection (a)(1) or (b) include, in addition to the amount required under section 1452(a) of title 10, United States Code, an amount determined under regulations prescribed by the Secretary of Defense for the purposes of this subsection. Any such amount shall be stated as a percentage of the base amount of the person making the election and shall reflect the number of years that have elapsed since the person retired, but may not exceed 4.5 percent of that person's base amount.''

DEFINITIONS FOR 1989 AMENDMENTS

Section 1406 of title XIV of div. A of Pub. L. 101–189, as amended by Pub. L. 102–190, div. A, title VI, §653(a)(2), Dec. 5, 1991, 105 Stat. 1388, provided that: ''For the purpose of this title [see Short Title of 1989 Amendment note set out under section 1447 of this title]:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'retired pay' includes retainer pay paid under section 6330 of title 10, United States Code.

''(3) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(4) The term 'SBP premium' means the reduction in retired pay required as a condition of providing an annuity under the Survivor Benefit Plan.

''(5) The term 'base amount' has the meaning given that term in section 1447(2) of title 10, United States Code.''

ANNUITY FOR SURVIVING SPOUSES OF MEMBERS WHO DIED BEFORE NOVEMBER 1, 1953, AND WHO WERE ENTITLED TO RETIRED OR RETAINER PAY ON DATE OF DEATH

Pub. L. 100–456, div. A, title VI, §653, Sept. 29, 1988, 102 Stat. 1991, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(3), Oct. 5, 1994, 108 Stat. 2858, provided that:

''(a) ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) died before November 1, 1953; and

''(B) was entitled to retired or retainer pay on the date of death.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is eligible for an annuity under section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(b) AMOUNT OF ANNUITY.—(1) An annuity payable under this section shall be paid at the rate of $165 per month, as adjusted from time to time under subsection (c).

''(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

''(c) COST-OF-LIVING INCREASES.—Whenever retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under this section.

''(d) RELATIONSHIP TO OTHER PROGRAMS.—An annuity paid to a surviving spouse under this section is in addition to any pension to which the surviving spouse is entitled under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (38 U.S.C. 1521 note), and any payment made under the provisions of section 4 of Public Law 92–425. An annuity paid under this section shall not be considered as income for the purposes of eligibility for any such pension.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in paragraphs (3) and (4), respectively, of section 1447 of title 10, United States Code.

''(f) EFFECTIVE DATE.—Annuities under this section shall be paid for months beginning after the month in which this Act is enacted [September 1988]. No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month referred to in the preceding sentence. No benefit shall be paid to any person under this section unless an application for such benefit has been filed with the Secretary concerned by or on behalf of such person.''

AUTHORITY FOR CERTAIN REMARRIED SURVIVOR BENEFIT PLAN PARTICIPANTS TO WITHDRAW FROM PLAN

Pub. L. 100–180, div. A, title VI, §631, Dec. 4, 1987, 101 Stat. 1104, provided that:

''(a) AUTHORITY TO WITHDRAW.—(1) An individual who is a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and is described in paragraph (2) may, with the consent of such individual's spouse, withdraw from participation in the Plan.

''(2) An individual referred to in paragraph (1) is an individual who—

''(A) is providing coverage for a spouse or for a spouse and child under the Plan; and

''(B) remarried before March 1, 1986, and at a time when such individual was a participant in the Plan but did not have an eligible spouse beneficiary under the Plan.

''(b) APPLICABLE PROVISIONS.—An election under subsection (a) shall be subject to subparagraphs (B) and (D) of section 1448(a)(6) of title 10, United States Code, except that in applying such subparagraph (B) to subsection (a), the one-year period referred to in clause (ii) of such subparagraph shall extend until the end of the one-year period beginning 90 days after the date of the enactment of this Act [Dec. 4, 1987].

''(c) TREATMENT OF PRIOR CONTRIBUTIONS.—No refund of amounts by which the retired pay of a participant in the Survivor Benefit Plan has been reduced by reason of section 1452 of title 10, United States Code, may be made to an individual who withdraws from the Survivor Benefit Plan under subsection (a).''

OPTION FOR CERTAIN PARTICIPANTS TO WITHDRAW FROM SURVIVOR BENEFIT PLAN

Section 711(c) of Pub. L. 99–145 provided that: ''A person who during the period beginning on October 19, 1984, and ending on the date of the enactment of this Act [Nov. 8, 1985] became a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, may elect to withdraw from the Plan before the end of the one-year period beginning on the date of the enactment of this Act. Any person who makes a withdrawal shall be paid the amount of the contributions by such person under the Plan, plus interest on such amount as determined by the Secretary of Defense.''

PERSONS COVERED UNDER SUBSECTIONS (d) AND (f)

Section 712(b) of Pub. L. 99–145 provided that:

''(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the surviving spouse and dependent children of a person who dies on

active duty after September 20, 1972, and the former spouse of a person who dies after September 7, 1982.

''(2) In the case of the surviving spouse and children of a person who dies during the period beginning on September 21, 1972, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(d) of title 10, United States Code, as amended by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.''

Section 713(c) of Pub. L. 99–145 provided that:

''(1) Section 1448(f) of title 10, United States Code, as added by subsection (a), shall apply to the surviving spouse and dependent children of any person who dies after September 30, 1978, and the former spouse of a person who dies after September 7, 1982.

''(2) In the case of the surviving spouse and dependents of a person who dies during the period beginning on September 30, 1978, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(f) of title 10, United States Code, as added by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.''

REVISION FOR FORMER SPOUSE COVERAGE ALREADY IN EFFECT

Section 716(b) of Pub. L. 99–145, as amended by Pub. L. 99–661, div. A, title VI, § 645, Nov. 14, 1986, 100 Stat. 3887, provided that: ''A person who before March 1, 1986, made an election under section 1448(b) of title 10, United States Code, to provide an annuity for a former spouse may elect to change that election so as to provide an annuity for the former spouse and the dependent children of the person, as authorized by paragraph (4) of that section added by subsection (a). Such an election may be made even though the former spouse for whom the annuity was provided has died. Such an election must be made—

''(1) not later than March 1, 1987, in the case of a person who made the election to provide an annuity for a former spouse before November 8, 1985; and

''(2) not later than the end of the one-year period beginning on the date of the enactment of the Department of Defense Authorization Act, 1987 [Nov. 14, 1986], in the case of a person who made the election to provide an annuity for a former spouse during the period beginning on November 8, 1985, and ending on February 28, 1986.''

ONE-YEAR OPEN PERIOD TO SWITCH COMPUTATION OF SBP ANNUITY

Section 723(c) of Pub. L. 99–145 provided that: ''A person who, before the effective date of this title [see Effective Date of 1985 Amendment note set out under section 1447 of this title], participated in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and had elected to provide an annuity to a former spouse may, with the concurrence of such former spouse, elect to terminate such annuity and provide an annuity to such former spouse under section 1450(a)(1) of such title. Any such election shall be made before the end of the 12-month period beginning on the date of the enactment of this Act [Nov. 8, 1985].''

ONE-YEAR OPEN PERIOD FOR NEW FORMER SPOUSE COVERAGE

Section 723(d) of Pub. L. 99–145 provided that: ''A person who before the effective date of this part [part B of title VII of Pub. L. 99–145, see Effective Date of 1985 Amendment note set out under section 1447 of this title] was a participant in the Survivor Benefit Plan and did not elect to provide an annuity to a former spouse may elect to provide an annuity to a former spouse under the Plan. Any such election shall be made before the end of the 12-month period beginning on the date of the enactment of this Act [Nov. 8, 1985].''

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN

Pub. L. 97–35, title II, § 212, Aug. 13, 1981, 95 Stat. 383, as amended by Pub. L. 97–252, title XI, § 1119, Sept. 8, 1982, 96 Stat. 753, provided that:

''(a)(1) Any eligible member who on the date of the enactment of this Act [Aug. 13, 1981] is not a participant in the Survivor Benefit Plan may elect to participate in the Plan during the open enrollment period specified in subsection (b).

''(2) Any eligible member who on the date of the enactment of this Act is a participant in the Plan but elected not to participate in the Plan at the maximum level or (in the case of an eligible member who is married) elected to provide an annuity under the Plan for a dependent child and not for the member's spouse may during the open enrollment period elect to participate in the Plan at a higher level or to provide an annuity under the Plan for the eligible member's spouse at a level not less than the level provided for the dependent child.

''(3) Any such election shall be made in the same manner as an election under section 1448 of such title [this title] and shall be effective when received by the Secretary concerned. Notwithstanding the last sentence of section 1452(a) of such title, the reduction in retired or retainer pay prescribed by the first sentence of such section shall, in the case of an individual making an election under paragraph (1), begin on the first day of the first month beginning after such election is effective.

''(b) The open enrollment period is the period beginning on October 1, 1981, and ending on September 30, 1982, in the case of a member or former member of the uniformed services who on August 13, 1981, was entitled to retired or retainer pay, and the period beginning on October 1, 1982, and ending on September 30, 1983, in the case of a member or former member who on August 13, 1981, would have been entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code, but for the fact that he was under sixty years of age on that date.

''(c) If an individual making an election under subsection (a) dies before the end of the two-year period beginning on the date of that election, the election, is void and the amount of any reduction in the retired or retainer pay of such individual that is attributable to the election shall be paid in a lump sum to that individual's beneficiary under the Plan (as designated under that election).

''(d) sections 1449, 1453, and 1454 of title 10, United States Code are applicable to individuals making elections and to elections under this section.

''(e) For the purposes of this section:

''(1) The term 'eligible member' means a member or former member of the uniformed services who on August 13, 1981 (A) was entitled to retired or retainer pay, or (B) would have been entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code, but for the fact that he was under sixty years of age on that date.

''(2) The term 'Survivor Benefit Plan' or 'Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(3) The term 'Secretary concerned' has the meaning given such term in section 101(5) of title 37, United States Code.''

SURVIVING SPOUSE; ANNUITY PAYMENT AND REDUCTION PROVISIONS; ELECTION OF ANNUITY; DEFINITIONS; EFFECTIVE DATE

Pub. L. 96–402, § 5, Oct. 9, 1980, 94 Stat. 1707, provided that:

''(a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

''(A) died before September 21, 1972;

''(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

''(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

''(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

''(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

''(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity paid to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

''(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

''(d) As used in this section:

''(1) The term 'uniformed services' means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in section 1447 of title 10, United States Code.

''(3) The term 'Secretary concerned' has the meaning given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.''

Provision effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

ELECTION TO PARTICIPATE IN THE SURVIVOR BENEFIT PLAN AND WITHDRAW FROM THE RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 3 of Pub. L. 92–425, as amended by Pub. L. 93–155, title VIII, §804, Nov. 16, 1973, 87 Stat. 615, provided that:

''(a) The Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] applies to any person who initially becomes entitled to retired or retainer pay on or after the effective date of this Act [Sept. 21, 1972]. An election made before that date by such a person under section 1431 of title 10, United States Code, is canceled. However, a person who initially becomes entitled to retired or retainer pay within 180 days after the effective date of this Act [Sept. 21, 1972] may, within 180 days after becoming so entitled, elect—

''(1) not to participate in such Survivor Benefit Plan if he is married or has a dependent child; or

''(2) to participate in that Plan, if he is a person covered by section 1448(b) of title 10, United States Code.

''(b) Any person who is entitled to retired or retainer pay on the effective date of this Act [Sept. 21, 1972] may elect to participate in the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] at any time within eighteen months after such date. However, such a person who is receiving retired or retainer pay reduced under section 1436(a) of title 10, United States Code, or who is depositing amounts under section 1438 of that title, may elect at any time within eighteen months after the effective date of this Act [Sept. 21, 1972]—

''(1) to participate in the Plan and continue his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972], except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay; or

''(2) to participate in the Plan and, notwithstanding section 1436(b) of that title, terminate his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972].

A person who elects under clause (2) of this subsection is not entitled to a refund of amounts previously deducted from his retired or retainer pay under chapter 73 of title 10, United States Code [this chapter], as in effect on the day before the effective date of this Act [Sept. 21, 1972], or any payments made thereunder on his behalf. A person who is not married or does not have a dependent child on the first anniversary of the effective date of this Act [Sept. 21, 1972], but who later marries or acquires a dependent child, may elect to participate in the Plan under the fourth sentence of section 1448(a) of that title [subsec. (a) of this section].

''(c) Notwithstanding the provisions of the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter], and except as otherwise provided in this section, subchapter I of chapter 73 of title 10, United States Code [subchapter I of this chapter] (other than the last two sentences of section 1436(a), section 1443, and section 1444(b)), as in effect on the day before the effective date of this Act [Sept. 21, 1972], shall continue to apply in the case of persons, and their beneficiaries, who have elected annuities under section 1431 or 1432 of that title and who have not elected under subsection (b)(2) of this section to participate in that Plan.

''(d) In this section, 'base amount' means—

''(1) the monthly retired or retainer pay to which a person—

''(A) is entitled on the effective date of this Act [Sept. 21, 1972]; or

''(B) later becomes entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list; or

''(2) any amount less than that described in clause (1) designated by that person at the time he makes an election under subsection (a)(2) or (b) of this section, but not less than $300;

as increased from time to time under section 1401a of title 10, United States Code.

''(e) An election made under subsection (a) or (b) of this section is effective on the date it is received by the Secretary concerned, as defined in section 101(5) of title 37, United States Code.

''(f) Sections 1449, 1453, and 1454 of title 10, United States Code, as added by clause (3) of the first section of this Act [as part of this subchapter], are applicable to persons covered by this section.''

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Section 4 of Pub. L. 92–425, as amended by Pub. L. 94–496, §2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §209, Sept. 30, 1978, 92 Stat. 848; Pub. L. 96–402, §6,

Oct. 9, 1980, 94 Stat. 1708; Pub. L. 98–94, title IX, § 942(a), Sept. 24, 1983, 97 Stat. 654; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 103–337, div. A, title X, § 1070(d)(4), Oct. 5, 1994, 108 Stat. 2858, provided that:

''(a) A person—

''(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, a widow of a person who was entitled to retired or retainer pay when he died;

''(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [set out as note under section 1521 of Title 38]; and

''(3) whose annual income, as determined in establishing that eligibility, is less than $2,340;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

''(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431–1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals $2,340 a year. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

''(c) The amounts specified in subsections (a)(3) and (b) shall be increased by the Secretary concerned whenever there is an increase under section 5312 of title 38, United States Code, in the maximum annual rate of pension under section 1541(b) of such title. Any such increase under the preceding sentence shall be in the same amount, and shall have the same effective date, as such increase in the maximum annual rate of pension.

''(d) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause 3 of the first section of this Act, are applicable to persons covered by this section.''

[Section 942(b) of Pub. L. 98–94 provided that: ''Any annuity payable by reason of subsection (a) [amending subsec. (a)(1) of this note] shall be payable only for months after September 1983.'']

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

The 90-day period, referred to in subsec. (a)(2), (4)(B), with respect to certain individuals shall be considered to end on Mar. 31, 1980, see section 208 of Pub. L. 95–397, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1447, 1449, 1450, 1451, 1452, 1455, 1458 of this title; title 38 section 1318.

§ 1449. Mental incompetency of member

If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired pay by reason of such an election will not be refunded.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 95–397, title II, § 207(a), Sept. 30, 1978, 92 Stat. 848; Pub. L. 101–189, div. A, title XIV, § 1407(a)(3), title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' and struck out ''or retainer'' after ''made from retired''.

1978—Pub. L. 95–397 substituted ''subsection (a)(2) or (b)'' for ''the first sentence of subsection (a), or subsection (b)''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1450, 1460a of this title.

§ 1450. Payment of annuity: beneficiaries

(a) Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as he may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to—

(1) the eligible widow or widower or the eligible former spouse;

(2) the surviving dependent children in equal shares, if the eligible widow or widower or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section;

(3) the dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse; or

(4) the natural person designated under section 1448(b) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost. An annuity for a widow, widower, or former spouse shall be paid to the widow, widower, or former spouse while the widow, widower, or former spouse is living or, if the widow, widower, or former spouse remarries before reaching age 55, until the widow, widower, or former spouse remarries. If the widow, widower, or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce,

payment of the annuity will be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the widow, widower, or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the widow, widower, or former spouse may not receive both annuities but must elect which to receive.

(c) If, upon the death of a person to whom section 1448 of this title applies, the widow, widower, or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the widow, widower, or former spouse may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation. A reduction in an annuity under this section required by the preceding sentence shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, he notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) If no annuity under this section is payable because of subsection (c), any amounts deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the widow, widower, or former spouse. If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted prior to the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the widow, widower, or former spouse.

(f)(1) A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child. The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under the first sentence of this paragraph. Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make an election under such section).

(2) A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change such election under paragraph (1) unless—

(A) in a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect; or

(B) in a case of a written agreement that has not been incorporated or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3)(A) If a person described in paragraph (2) or (3) of section 1448(b) of this title enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and such agreement has been incorporated in or ratified or approved by a court order or has been filed with the court of appropriate jurisdiction in accordance with applicable State law or if such person is required by a court order to make such an election, and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives a written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made and receives a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(C) An election deemed to have been made under subparagraph (A) shall become effective on the first day of the first month which begins after the date of the court order or filing involved.

(4) A court order may require a person to elect (or to enter into an agreement to elect) under

section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) Except as provided in section 1449 of this title or in subsection (f) of this section, an election under this section may not be changed or revoked.

(h) Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Department of Veterans Affairs.

(i) Except as provided in subsection (*l*)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title. An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k)(1) If a widow, widower, or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to compensation under section 1311(a) of title 38 because of the remarriage of such widow, widower, or former spouse, and if at the time of such remarriage such widow, widower, or former spouse is 55 years of age or more, the amount of the annuity of such widow, widower, or former spouse shall be readjusted, effective on the effective date of such loss of compensation, to the amount of the annuity which would be in effect with respect to such widow, widower, or former spouse if the adjustment under subsection (c) had never been made.

(2) A widow, widower, or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c). If the repayment is not made in a lump sum, the widow, widower, or former spouse shall pay interest on the amount to be repaid commencing on the date on which the first such payment is due and applied over the period during which any part of the repayment remains to be paid. The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title. An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(*l*)(1) Upon application of the beneficiary of a participant in the Plan whose retired pay has been suspended on the basis that the participant is missing (or of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age and whose retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing), the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant is presumed dead unless he finds—

(A) that the participant has been missing for at least 30 days; and

(B) that the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive, any annuity being paid under this subchapter by reason of this subsection shall be terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(B) If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from his beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94–496, §1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §§203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97–22, §11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97–252, title X, §1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98–94, title IX, §941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98–525, title VI, §§642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99–145, title VII, §§713(b), 717, 718, 719(4)–(6), (8)(A), 722, 723(a), (b)(1), title XIII, §1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674–677, 739; Pub. L. 99–661, div. A, title VI, §§641(a), (b)(2), (3), 643(a), title XIII, §1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100–26, §3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VI, §636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–224, §5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101–189, div. A, title XIV, §1407(a)(2)–(4), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103–337, div. A, title X, §1070(e)(3), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Subsecs. (c), (k)(1). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (f)(3)(B). Pub. L. 101–189, § 1407(a)(4), substituted ''within one year of the date of the court order or filing involved'' for ''before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later''.

Subsec. (h). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (*l*)(1). Pub. L. 101–189, § 1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (*l*)(2). Pub. L. 101–189, § 1407(a)(3), struck out ''or retainer'' after ''of which the retired''.

1987—Subsec. (b). Pub. L. 100–26, § 3(3), made technical amendment to directory language of Pub. L. 99–661, § 643(a). See 1986 Amendment note below.

Subsec. (f)(3)(A). Pub. L. 100–224 struck out second of two commas after ''required by a court order to make such an election''.

Subsec. (k)(1). Pub. L. 100–180 substituted ''55 years of age'' for ''60 years of age''.

1986—Subsec. (b). Pub. L. 99–661, § 643(a), as amended by Pub. L. 100–26, § 3(3), substituted ''age 55'' for ''age 60'' in two places.

Subsec. (c). Pub. L. 99–661, § 1343(a)(8)(C), substituted ''entitled to dependency and indemnity compensation'' for ''entitled to compensation''.

Subsec. (f)(2). Pub. L. 99–661, § 641(b)(2)(A), substituted ''is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement,'' for ''enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement''.

Subsec. (f)(2)(A). Pub. L. 99–661, § 641(b)(2)(B), substituted ''in a case in which the election is required by a court order, or in which an agreement to make the election'' for ''in a case in which such agreement''.

Subsec. (f)(2)(A)(i). Pub. L. 99–661, § 641(b)(2)(C), substituted ''relating to such election, or the agreement to make such election,'' for ''relating to the agreement to make such election''.

Subsec. (f)(2)(B). Pub. L. 99–661, § 641(b)(2)(D), substituted ''of a written agreement that'' for ''in which such agreement''.

Subsec. (f)(3)(A). Pub. L. 99–661, § 641(b)(3), struck out ''voluntary'' before ''written agreement'' in two places, inserted ''or if such person is required by a court order to make such an election,'' after ''applicable'' and inserted ''requires such election or'' after ''on its face, which''.

Subsec. (f)(4). Pub. L. 99–661, § 641(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.''

1985—Subsec. (a)(1), (2). Pub. L. 99–145, § 723(a)(1), inserted ''or the eligible former spouse'' after ''widow or widower''.

Subsec. (a)(3). Pub. L. 99–145, § 723(a)(2), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''title applies'', and ''or former spouse'' after ''the spouse''.

Subsec. (a)(4). Pub. L. 99–145, § 723(a)(3), struck out ''former spouse or other'' before ''natural person'' in two places.

Subsec. (b). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in eight places.

Pub. L. 99–145, § 719(4), substituted ''under the Plan'' for ''under this section''.

Subsec. (c). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Pub. L. 99–145, § 718, inserted provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (e). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in two places.

Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Subsec. (f)(3)(A). Pub. L. 99–145, § 722(1), inserted ''or has been filed with the court of appropriate jurisdiction in accordance with applicable State law'' after ''by a court order'' and ''or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law'' after ''voluntary written agreement of such person''.

Subsec. (f)(3)(B), (C). Pub. L. 99–145, § 722(2), inserted ''or filing'' after ''court order''.

Subsec. (i). Pub. L. 99–145, § 1303(a)(11)(A), substituted ''subsection (*l*)(3)(B)'' for ''subsection (*l*)''.

Subsec. (j). Pub. L. 99–145, § 719(5), substituted ''a person providing a reserve-component annuity'' for ''any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pub. L. 99–145, § 713(b), inserted provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99–145, § 723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' wherever appearing.

Subsec. (k)(1). Pub. L. 99–145, § 717(1), (2), designated existing provisions as par. (1) and substituted ''had never been made.'' for ''had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).''

Subsec. (k)(2). Pub. L. 99–145, § 717(3), added par. (2).

Subsec. (*l*)(1). Pub. L. 99–145, § 719(6)(A), (8)(A), substituted in first sentence ''the Plan'' for ''the plan'' in two places, and substituted ''retired pay'' for ''retired or retainer pay'' before ''has been suspended''.

Subsec. (*l*)(2). Pub. L. 99–145, § 719(6)(B), struck out ''the provision of'' before ''this subchapter''.

Subsec. (*l*)(3)(A). Pub. L. 99–145, § 1303(a)(11)(B), struck out ''(notwithstanding subsection (h))'' before ''may be collected''.

Subsec. (*l*)(3)(A)(i). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retried or retainer pay''.

1984—Subsec. (f)(3), (4). Pub. L. 98–525, § 644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98–525, § 642(b)(1), substituted ''Except as provided in subsection (*l*), an'' for ''An''.

Subsec. (*l*). Pub. L. 98–525, § 642(b)(2), added subsec. (*l*).

1983—Subsec. (a)(4). Pub. L. 98–94, § 941(a)(3)(A), struck out ''at the time the person to whom section 1448 applies became entitled to retired or retainer pay'' after ''section 1448(b) of this title''.

Subsec. (f)(1). Pub. L. 98–94, § 941(a)(3)(B), inserted ''(without regard to the eligibility of the person making the change of election to make an election under such section)'' after ''section 1448(a)(5) of this title''.

Pub. L. 98–94, § 941(c)(3)(A), struck out ''of this subsection'' after ''subject to paragraph (2)''.

Subsec. (f)(2). Pub. L. 98–94, § 941(c)(3)(B), substituted ''or annulment,'' for ''annulment, or legal separation,''.

1982—Subsec. (a)(4). Pub. L. 97–252, § 1003(c), substituted ''former spouse or other natural person'' for ''natural person'' and ''unless the election to provide an annuity to the former spouse or other natural person has been changed as provided in subsection (f)'' for ''if there is no eligible beneficiary under clause (1) or clause (2)''.

Subsec. (f). Pub. L. 97–252, § 1003(d), designated existing provisions as par. (1), substituted ''A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2) of this subsection,'' for ''An unmarried person who elects to provide an annuity to a person

designated by him under subsection (a)(4), but who later marries or acquires a dependent child,'', inserted provision that the Secretary concerned notify the former spouse or such other natural person previously designated under section 1448(b) of any such change in election, and added pars. (2) and (3).

1981—Subsec. (d). Pub. L. 97–22 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1978—Subsec. (a). Pub. L. 95–397, § 203(1), inserted ''(or on such other day as he may provide under subsection (j))'' after ''death of a person to whom section 1448 of this title applies''.

Subsec. (d). Pub. L. 95–397, § 207(b), substituted ''section 8339(j)'' for ''section 8339(i)''.

Subsec. (f). Pub. L. 95–397, § 207(c), substituted ''section 1448(a)(5)'' for ''the last three sentences of section 1448(a)''.

Subsecs. (j), (k). Pub. L. 95–397, § 203(2), added subsecs. (j) and (k).

1976—Subsec. (a)(3), (4). Pub. L. 94–496, § 1(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 94–496, § 1(4), substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 636(b) of Pub. L. 100–180 provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the amendments made by section 643(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3886) [amending this section].''

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 641(c) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section and section 1448 of this title] apply to court orders issued on or after the date of the enactment of this Act [Nov. 14, 1986].''

Section 643(b) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to remarriages that occur on or after the date of the enactment of this Act [Nov. 14, 1986], but only with respect to payments for periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1451, 1452, 1455, 1457, 1458, 1460a of this title; title 38 section 1318.

§ 1451. Amount of annuity

(a)(1) In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 35 percent of the base amount. However, if the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary, the annuity shall be computed under that subsection.

(2) In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 35 percent; and

(ii) is determined under subsection (f).

However, if the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary, the annuity shall be computed under that subsection.

(b)(1) In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and
(B) is determined under subsection (f).

(3) For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;
(B) who dies before becoming 60 years of age; and
(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c)(1) In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay based upon his years of active service when he died.

(B) If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to 35 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay based upon his years of active service when he died. However, if the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary, the annuity shall be computed under that subsection.

(2) An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) In the case of an annuity provided by reason of the service of a member described in section 1448(d)(1)(B) or 1448(d)(1)(C) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d)(1) The annuity of a person whose annuity is computed under clause (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2)(A) Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under clause (B) of that subsection.

(B) In the case of a person eligible to have the annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, an annuity computed with a reduction under subsection (e)(3) is more favorable than an annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e)(1) The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the widow, widower, or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

(i) was a participant in the Plan;
(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or
(iii) would have been eligible for retired pay under chapter 67[1] of this title but for the fact that he was under 60 years of age.

(2) Subject to paragraph (3), an annuity computed under this subsection shall be determined as follows:

(A) In the case of a beneficiary of a standard annuity under section 1450(a) of this title, the annuity shall be the amount equal to 55 percent of the base amount.

(B) In the case of a beneficiary of a reserve-component annuity under section 1450(a) of this title, the annuity shall be the percentage of the base amount that—

(i) is less than 55 percent; and
(ii) is determined under subsection (f).

(C) In the case of a beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) An annuity computed under this subsection shall be reduced by the lesser of—

(A) the amount of the survivor benefit, if any, to which the widow or widower or former spouse would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person con-

[1] See References in Text note below.

cerned as described in section 210(*l*)(1) of such Act (42 U.S.C. 410(*l*)(1)) and calculated assuming that the person concerned lives to age 65; or

(B) 40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4)(A) For the purpose of paragraph (3), a widow or widower or former spouse shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(*l*)(1) of the Social Security Act (42 U.S.C. 410(*l*)(1))—

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration—

(1) the age of the person electing to provide the annuity at the time of such election;

(2) the difference in age between such person and the beneficiary of the annuity;

(3) whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth;

(4) appropriate group annuity tables; and

(5) such other factors as the Secretary considers relevant.

(g)(1) Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time. The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay). The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(h)(1) Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time. The increase shall be by the same percent as the percent by which the retired pay of the participant is increased.

(2) When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) In the case of an annuity under the Plan which is computed on the basis of the retired pay of a member or former member who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who died before attaining such age, such annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 709; amended Pub. L. 94–496, §1(4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §204, Sept. 30, 1978, 92 Stat. 846; Pub. L. 96–402, §3, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–22, §11(a)(4), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, §922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, §641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title VII, §711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670; Pub. L. 99–348, title III, §301(a)(2), (b), (c), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title VI, §642(b), title XIII, §1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; Pub. L. 100–26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–224, §3(a), (c), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 100–456, div. A, title VI, §652(a), Sept. 29, 1988, 102 Stat. 1991; Pub. L. 101–189, div. A, title XIV, §§1403(a), 1407(a)(5)–(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588, 1589; Pub. L. 103–337, div. A, title X, §1070(e)(4), Oct. 5, 1994, 108 Stat. 2859.)

REFERENCES IN TEXT

Chapter 67 of this title, referred to in subsec. (e)(1)(B)(iii), was transferred to part II of subtitle E of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

The Social Security Act, referred to in subsec. (e)(3)(A), (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6413(c) of the Internal Revenue Code of 1986, referred to in subsec. (e)(4)(B)(ii), is classified to section 6413(c) of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (c)(3). Pub. L. 101–189, §1403(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an annuity provided by a member described in section 1448(d)(1)(C) of this title, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the highest grade other than a commissioned officer grade in which the member served on active duty satisfactorily, as determined by the Secretary concerned.''

Subsec. (c)(4). Pub. L. 101–189, §1407(a)(5), inserted ''by reason of the service of a person who first became a member of a uniformed service before September 8, 1980''.

Subsec. (e)(1). Pub. L. 101–189, §1407(a)(6), substituted ''beneficiaries under the Plan'' for ''beneficiaries under the plan'' in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 101–189, §1407(a)(7), in cl. (i), substituted ''was'' for ''is'', in cl. (ii), substituted ''was'' for ''is'' in two places and ''had'' for ''has'', and in cl. (iii), substituted ''would have been'' for ''would be'' and ''was'' for ''is''.

Subsec. (e)(2)(A), (B). Pub. L. 101–189, §1407(a)(8), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(3)(A), (4)(A). Pub. L. 101–189, §1407(b)(1), inserted ''or former spouse'' after ''widow or widower''.

1988—Subsec. (e)(1). Pub. L. 100–456 substituted ''widow, widower, or former spouse'' for ''widow or widower'' in subpar. (A), and inserted ''or former spouse'' after ''A spouse'' in subpar. (B).

1987—Subsec. (a)(1)(A), (B), (2)(A), (B). Pub. L. 100–224, §3(a)(2), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(4)(B)(ii). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (h). Pub. L. 100–224, §3(a)(1), designated existing provisions of subsec. (h) as par. (3) and added pars. (1) and (2).

Subsec. (i). Pub. L. 100–224, §3(c), substituted ''so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section)'' for ''on the basis of the amount of retired pay to which the member or former member would have been entitled upon recomputation of such pay effective on such date under section 1410 of this title, had the member or former member attained such age''.

1986—Subsec. (a)(1)(A). Pub. L. 99–661, §1343(a)(8)(D), substituted ''section'' for ''subsection'' before ''1401a of this title''.

Pub. L. 99–661, §642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(1)(B). Pub. L. 99–661, §642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (a)(2)(A). Pub. L. 99–661, §642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(2)(B). Pub. L. 99–661, §642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (c)(1)(A). Pub. L. 99–661, §642(b)(2)(A), inserted ''or is a dependent child''.

Subsec. (c)(1)(B). Pub. L. 99–661, §642(b)(2)(B), inserted ''(other than a dependent child)''.

Subsec. (g)(1). Pub. L. 99–348, §301(b), struck out ''by the same total percent'' after ''same time'' in first sentence, and inserted provision that the increase, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive, and otherwise entitled to such pay.

Subsecs. (h), (i). Pub. L. 99–348, §301(a)(2), (c), added subsecs. (h) and (i).

1985—Pub. L. 99–145, §711(a), amended section generally, eliminating the social security offset to the Plan and establishing a two-tier system under which the beneficiary would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to social security based on military service, and providing benefits to certain beneficiaries under either the old social security offset system or the new two-tier system, whichever is higher.

Subsec. (a)(3). Pub. L. 99–145, §711(b), repealed Pub. L. 98–525, §641(a), effective Sept. 1, 1985. See 1984 Amendment note below.

1984—Subsec. (a)(3). Pub. L. 98–525, §641(a), which substituted ''is entitled'' for ''would be entitled'' after ''widow or widower'' in first sentence and inserted ''or to the extent that the benefit to which the beneficiary is entitled is based on the beneficiary's own earnings or self-employment'' at end of second sentence, was repealed effective Sept. 1, 1985, by Pub. L. 99–145, §711(b). See Effective Date of 1984 Amendment note below.

1983—Subsec. (e). Pub. L. 98–94 added subsec. (e).

1981—Subsec. (a)(4). Pub. L. 97–22 substituted ''December 1, 1980'' for ''the effective date of the Uniformed Services Survivor Benefits Amendments of 1980''.

1980—Subsec. (a). Pub. L. 96–402, §3(a), in revising subsec. (a), designated as par. (1)(A) and (B) existing first sentence containing cls. (1) and (2) and provided in subpar. (A) for adjustment of the annuity from time to time under section 1401a of this title and in subpar. (B) for a similar adjustment after the date the person becomes entitled to retired pay under chapter 67 of this title; designated as par. (2) existing second sentence but provided for reduction of the annuity by the lesser of amounts indicated in subpar. (A) or (B), previously limited to reduction by amount prescribed in predecessor of subpar. (A) provision; designated existing third and fourth sentences as par. (3) and inserted annuity reduction provision described for par. (2); and added par. (4).

Subsec. (c). Pub. L. 96–402, §3(b), substituted in first sentence ''this section or under section 1448(d) of this title'' for ''this section, or section 1448(d) of this title, on the day before the effective day of that increase'' and in second sentence ''title or under'' for ''title, or'' before ''subsection (a)''.

Subsec. (d). Pub. L. 96–402, §3(c), substituted reference to ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

1978—Subsec. (a). Pub. L. 95–397, §204(a), (b), substituted ''The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—'' for ''If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount.'', and added pars. (1) and (2), and substituted ''For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work'' for ''For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work''.

Subsec. (b). Pub. L. 95–397, §204(c), substituted ''The monthly annuity payable under section 1450(a)(4) of this title shall be—'' for ''The monthly annuity payable under section 1450(a)(4) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c)

of this title.'', added pars. (1) and (2) and provision following par. (2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

Subsec. (d). Pub. L. 95–397, § 204(d), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–496 substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1407(b)(2) of Pub. L. 101–189 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply only with respect to the computation of an annuity for a person who becomes a former spouse under a divorce that becomes final after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 652(b) of Pub. L. 100–456 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments under the Survivor Benefit Plan established under subchapter II of chapter 73 of title 10, United States Code, for periods after February 28, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(b) of Pub. L. 99–661 applicable to payments for periods after Feb. 28, 1986, see section 642(c) of Pub. L. 99–661, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 711(a) of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

Section 711(b) of Pub. L. 99–145 provided that the repeal of section 641 of Pub. L. 98–525 [amending this section and enacting provision set out below] is effective Sept. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 641(b) of Pub. L. 98–525, which provided that the amendments made by subsection (a), amending this section, was applicable only in the case of payments of annuities payable for periods that began on or after Sept. 30, 1985, was repealed effective Sept. 1, 1985, by section 711(b) of Pub. L. 99–145.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

ADJUSTMENT OF ANNUITIES FOR SURVIVORS OF CERTAIN MEMBERS WHO DIED WHILE ON ACTIVE DUTY BETWEEN SEPTEMBER 21, 1972 AND NOVEMBER 29, 1990

Section 1403(b)–(d) of Pub. L. 101–189 provided that:

''(b) ADJUSTMENT OF ANNUITIES ALREADY IN EFFECT.—

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the annuity of any person who on the effective date specified in subsection (d) is entitled to an annuity under the Survivor Benefit Plan by reason of eligibility described in section 1448(d)(1)(B) or 1448(d)(1)(C) of title 10, United States Code, and who is further described in subsection (c).

''(2) AMOUNT OF RECOMPUTED ANNUITIES.—The amount of the annuity as so recomputed shall be the amount that would be in effect for that annuity on the effective date specified in subsection (d) if the annuity had originally been computed subject to the provisions of paragraph (3) of section 1451(c) of title 10, United States Code, as amended by subsection (a).

''(c) PERSONS ELIGIBLE FOR RECOMPUTATION.—A person is eligible to have an annuity under the Survivor Benefit Plan recomputed under subsection (b) if—

''(1) the annuity is based upon the service of a member of the uniformed services who died on active duty during the period beginning on September 21, 1972, and ending on the effective date specified in subsection (d); and

''(2) the retired pay of that member for the purposes of determining the amount of the annuity under the Survivor Benefit Plan was computed using a rate of basic pay lower than the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death.

''(d) EFFECTIVE DATE.—An annuity recomputed under subsection (b) shall take effect as so recomputed on March 1, 1990.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450, 1457, 1458 of this title.

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) STANDARD ANNUITY.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) DISABILITY AND NONREGULAR SERVICE RETIREES.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 67[1] of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) MEMBERS AS OF ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) NEW ENTRANTS AFTER ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 67[1] of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) ALTERNATIVE REDUCTION AMOUNTS.—For purposes of clauses (i) and (ii), the al-

[1] See References in Text note below.

ternative reduction amounts are the following:

(I) An amount equal to 6½ percent of the base amount.

(II) An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4)(A) Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) In addition to the increase under paragraph (4)(A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to persons who initially participate in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which their retired pay is computed.

(5) For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who—

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) CHILD-ONLY ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a participant in the Plan who is providing child-only coverage (as described in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) NO REDUCTION WHEN NO CHILD.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) SPECIAL RULE FOR CERTAIN RCSBP PARTICIPANTS.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) CHILD-ONLY COVERAGE DEFINED.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who—

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) The retired pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced—

(1) in the case of a person providing a standard annuity, by 10 percent plus 5 percent for each full five years the individual designated is younger than that person; or

(2) in the case of a person providing a reserve-component annuity, by an amount prescribed under regulations of the Secretary of Defense.

However, the total reduction under clause (1) may not exceed 40 percent. The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title. Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) of this title.

(d) If a person who has elected to participate in the Plan has been awarded retired pay and is

not entitled to that pay for any period, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when he is called or ordered to active duty for a period of more than 30 days.

(e) When a person who has elected to participate in the Plan waives his retired pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Office of Personnel Management that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) Except as provided in section 1450(e) of this title, a person is not entitled to any refunds of amounts deducted from retired pay under this section unless the amounts were deducted through administrative error.

(g)(1) Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), any person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Department of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan. Any such person's participation in the Plan shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date. Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) Upon the death of any person described in paragraph (1) who has discontinued participation in the Plan in accordance with this subsection, any amounts deducted from the retired pay of the deceased under this section shall be refunded to the widow or widower.

(5) Any person described in paragraph (1) who had discontinued participation in the Plan may again elect to participate in the Plan if (A) at any time after having discontinued participation in the Plan the Department of Veterans Affairs reduces such person's service-connected disability rating to less than total, and (B) such person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require. Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan, and the Secretary concerned shall begin making reductions in such person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on such day.

(h) Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(i) When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 94–496, §1(4), (5), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §205, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96–402, §4, Oct. 9, 1980, 94 Stat. 1706; Pub. L. 97–22, §11(a)(3), (5), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title VII, §§714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675–677; Pub. L. 99–348, title III, §301(a)(3), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, §1343(a)(8)(E), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–224, §3(b), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 101–189, div. A, title XIV, §§1402(a)–(c), 1407(a)(9), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1577, 1578, 1589, 1602; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C)(ii), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title VI, §637(a), Oct. 5, 1994, 108 Stat. 2790.)

REFERENCES IN TEXT

Chapter 67 of this title, referred to in subsec. (a)(1)(A)(i), (iii), was transferred to part II of subtitle E

of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§ 1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–337 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The retired pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse or former spouse, or who has a spouse or former spouse but has elected to provide an annuity for dependent children only, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.''

1990—Subsec. (h). Pub. L. 101–510 made clarifying amendment to directory language of Pub. L. 101–189, § 1407(a)(9), see 1989 Amendment note below.

1989—Subsec. (a). Pub. L. 101–189, § 1402(a), inserted heading.

Subsec. (a)(1). Pub. L. 101–189, § 1402(a), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in subsection (b), the retired pay of a person to whom section 1448 of this title applies who has a spouse or former spouse, or who has a spouse or former spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month—

''(A) by an amount equal to 2½ percent of the first $300 (as adjusted from time to time under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount, if the person is providing a standard annuity; or

''(B) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing a reserve-component annuity.''

Subsec. (a)(4)(A), (B). Pub. L. 101–189, § 1402(c), substituted ''amounts under paragraph (1)'' for ''amount under paragraph (1)(A)''.

Subsec. (a)(5). Pub. L. 101–189, § 1402(b), added par. (5).

Subsec. (g)(1), (5). Pub. L. 101–189, § 1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (h). Pub. L. 101–189, § 1407(a)(9), as amended by Pub. L. 101–510, inserted ''(or any other provision of law)'' after ''Whenever retired pay is increased under section 1401a of this title'' and substituted ''such retired pay is so increased'' for ''such retired pay is increased under section 1401a of this title''.

1987—Subsec. (i). Pub. L. 100–224 added subsec. (i).

1986—Subsec. (c). Pub. L. 99–348 inserted provision that computation of a member's retired pay for purposes of this subsection be made without regard to any reduction under section 1409(b)(2) of this title.

Subsec. (h). Pub. L. 99–661 struck out ''and retainer'' after ''Whenever retired''.

1985—Pub. L. 99–145, § 719(8)(B), struck out ''or retainer'' after ''retired'' in section catchline.

Subsec. (a)(1). Pub. L. 99–145, § 714(a)(1), (2), designated existing first sentence of subsec. (a) as par. (1); redesignated cl. (1) as (A), inserting ''(as adjusted from time to time under paragraph (4))'' after ''$300'' and substituting ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''; and redesignated cl. (2) as (B), substituting ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B)''.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 99–145, § 723(b)(2)(1), inserted ''or former spouse'' after first two references to ''spouse''.

Subsec. (a)(2). Pub. L. 99–145, § 714(a)(3), designated existing second sentence of subsec. (a) as par. (2), and substituted ''If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1)'' for ''As long as there is an eligible spouse and a dependent child, that amount''.

Subsec. (a)(3). Pub. L. 99–145, § 714(a)(4), designated existing third sentence of subsec. (a) as par. (3), substituted ''paragraph (1)'' for ''the first sentence of this subsection'', and inserted ''or former spouse'' after ''eligible spouse''.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(4). Pub. L. 99–145, § 714(a)(5), added par. (4).

Subsec. (b). Pub. L. 99–145, § 723(b)(2)(2), inserted ''or former spouse'' after ''spouse'' in two places.

Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (c). Pub. L. 99–145, § 719(7), (8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in three places, and substituted ''a standard annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title'' in cl. (1), ''a reserve-component annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title'' in cl. (2), and ''this subsection'' for ''this section'' in third sentence.

Subsecs. (d) to (h). Pub. L. 99–145, § 719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

1981—Subsec. (e). Pub. L. 97–22, § 11(a)(3), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (g)(4). Pub. L. 97–22, § 11(a)(5), substituted ''this section'' for ''section 1452 of this title''.

1980—Subsecs. (g), (h). Pub. L. 96–402, added subsecs. (g) and (h).

1978—Subsec. (a). Pub. L. 95–397, § 205(a), substituted pars. (1) and (2) for ''by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount'' after ''shall be reduced each month''.

Subsec. (c). Pub. L. 95–397, § 205(b), substituted pars. (1) and (2) for ''by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)'', and inserted provision following par. (2) that the total reduction under clause (1) may not exceed 40 percent, and that the reduction in retired or retainer pay shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person changes his election under section 1450(f) of this title.

1976—Subsec. (a). Pub. L. 94–496, § 1(4), (5)(A), substituted ''Except as provided in subsection (b), the retired or retainer pay'' for ''The retired or retainer pay'', ''(a)(4)'' for ''(a)(3)'', and inserted provision prohibiting a reduction in retired or retainer pay during any month in which there is no eligible spouse beneficiary.

Subsec. (b). Pub. L. 94–496, § 1(5)(B), inserted ''or who has a spouse but has elected to provide an annuity for dependent children only,'' after ''spouse,''.

Subsec. (c). Pub. L. 94–496, § 1(4), (5)(C), substituted ''(a)(4)'' for ''(a)(3)'', and inserted provision directing that reduction in retired or retainer pay continue during the lifetime of a beneficiary designated under section 1450(a)(4) of this title or until such person change his election pursuant to section 1450(f) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 637(b) of Pub. L. 103–337 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] applies to any election for child-only coverage under a reserve-component annuity under the Survivor Benefit Plan, whether made before, on, or after the date of the enactment of this Act [Oct. 5, 1994].

''(2) Paragraph (1) does not apply in a case of an election referred to in that paragraph that was made before

the date of the enactment of this Act if the participant was informed, in writing, before the date of the enactment of this Act that no reduction in the participant's retired pay for child-only coverage would be made during a period when there was no eligible dependent child.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(*l*)(4)(C) of Pub. L. 101–510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 714(b) of title VII of Pub. L. 99–145 provided that: ''The amendments made by clause (5) of subsection (a) [amending this section] shall apply only with respect to persons who first participate in the Plan on or after the effective date of this title [see note below].''

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, except as otherwise provided, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

RECOMPUTATION OF SBP PREMIUM FOR CURRENT PARTICIPANTS

Section 1402(d) of Pub. L. 101–189 provided that:

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the SBP premium of persons described in paragraph (2). Any such recomputation shall take effect on March 1, 1990.

''(2) PERSONS COVERED.—A person referred to in paragraph (1) as described in this paragraph is a person who on March 1, 1990—

''(A) is entitled to retired pay;

''(B) is providing spouse coverage (as described in paragraph (5) of section 1452 of title 10, United States Code, as added by subsection (b)); and

''(C) is subject to an SBP premium in excess of 6½ percent of the base amount of that person under the Survivor Benefit Plan.

''(3) AMOUNT OF RECOMPUTED PREMIUM.—The amount of an SBP premium recomputed under this subsection shall be 6½ percent of the base amount under the Survivor Benefit Plan of the person whose premium is recomputed.

''(4) SBP PREMIUM DEFINED.—For purposes of this subsection, the term 'SBP premium' means a reduction in retired pay under section 1452 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450, 1451, 1455, 1460, 1460a of this title; title 26 section 122.

§ 1453. Recovery of annuity erroneously paid

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 710.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1460a of this title.

§ 1454. Correction of administrative errors

The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 101–189, div. A, title XIV, § 1407(a)(10)(A), Nov. 29, 1989, 103 Stat. 1589.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''errors'' for ''deficiencies'' in section catchline.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1460a of this title.

§ 1455. Regulations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service. Those regulations shall—

(1) provide that before the date the member becomes entitled to retired pay—

(A) if the member is married, the member and the member's spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(B) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall be informed of the elections available and the effects of such elections; and

(2) establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(b) The regulations prescribed pursuant to subsection (a) shall provide procedures for the payment of an annuity under this subchapter in the case of—

(1) a person for whom a guardian or other fiduciary has been appointed; and

(2) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(c) The regulations under subsection (b) may include provisions for the following:

(1) In the case of an annuitant referred to in subsection (b)(1), payment of the annuity to the appointed guardian or other fiduciary.

(2) In the case of an annuitant referred to in subsection (b)(2), payment of the annuity to any person who, in the judgment of the Secretary concerned, is responsible for the care of the annuitant.

(3) Subject to paragraphs (4) and (5), a requirement for the payee of an annuity to spend or invest the amounts paid on behalf of the annuitant solely for benefit of the annuitant.

(4) Authority for the Secretary concerned to permit the payee to withhold from the annuity payment such amount, not in excess of 4 percent of the annuity, as the Secretary concerned considers a reasonable fee for the fiduciary services of the payee when a court appointment order provides for payment of such a fee to the payee for such services or the Secretary concerned determines that payment of a fee to such payee is necessary in order to obtain the fiduciary services of the payee.

(5) Authority for the Secretary concerned to require the payee to provide a surety bond in an amount sufficient to protect the interests of the annuitant and to pay for such bond out of the annuity.

(6) A requirement for the payee of an annuity to maintain and, upon request, to provide to the Secretary concerned an accounting of expenditures and investments of amounts paid to the payee.

(7) In the case of an annuitant referred to in subsection (b)(2)—

(A) procedures for determining incompetency and for selecting a payee to represent the annuitant for the purposes of this section, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the annuitant to submit additional evidence before the determination is made; and

(B) standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence.

(8) Provisions for any other matters that the President considers appropriate in connection with the payment of an annuity in the case of a person referred to in subsection (b).

(d) An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to subsection (b) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 99–145, title VII, § 724, Nov. 8, 1985, 99 Stat. 678; Pub. L. 102–190, div. A, title VI, § 654(a), Dec. 5, 1991, 105 Stat. 1389.)

AMENDMENTS

1991—Subsecs. (a) to (d). Pub. L. 102–190 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1985—Pars. (1), (2). Pub. L. 99–145 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) provide that, when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections; and

''(2) establish procedures for depositing the amounts referred to in section 1452(d) of this title.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1444a, 1448, 1450, 1454, 1460b of this title.

SUBCHAPTER III—SUPPLEMENTAL SURVIVOR BENEFIT PLAN

Sec.
1456. Supplemental spouse coverage: establishment of plan; definitions.
1457. Supplemental spouse coverage: payment of annuity; amount.
1458. Supplemental spouse coverage: eligible participants; elections of coverage.
1459. Former spouse coverage: special rules.
1460. Supplemental spouse coverage: reductions in retired pay.
1460a. Incorporation of certain administrative provisions.
1460b. Regulations.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 12731 of this title.

§ 1456. Supplemental spouse coverage: establishment of plan; definitions

(a) ESTABLISHMENT OF SUPPLEMENTAL SURVIVOR BENEFIT PLAN.—

(1) PLAN.—The Secretary of Defense shall carry out a program in accordance with this subchapter to enable participants in the Survivor Benefit Plan who are providing coverage for a spouse or former spouse beneficiary under that Plan to also provide a supplemental annuity for that spouse or former spouse beginning when the participant dies or when the spouse or former spouse becomes 62 years of age, whichever is later, in order to offset the effects of the two-tier annuity computation under the Survivor Benefit Plan.

(2) NAME OF PLAN.—The program under this subchapter shall be known as the Supplemental Survivor Benefit Plan.

(b) DEFINITIONS.—

(1) INCORPORATION OF DEFINITIONS APPLICABLE TO SURVIVOR BENEFIT PLAN.—The definitions in section 1447 of this title apply in this subchapter.

(2) SUPPLEMENTAL SPOUSE ANNUITY DEFINED.—In this subchapter, the term ''supplemental spouse annuity'' means an annuity provided to a spouse or former spouse under this subchapter.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1580.)

EFFECTIVE DATE

Section 1404(a)(1) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VI, § 631(1), Nov. 5, 1990, 104 Stat. 1580, provided that this subchapter is effective Apr. 1, 1992.

§ 1457. Supplemental spouse coverage: payment of annuity; amount

(a) COMMENCEMENT OF ANNUITY.—A supplemental spouse annuity commences on the later of—

(1) the day on which an annuity under the Survivor Benefit Plan becomes payable to the beneficiary; or

(2) the first day of the first month after the month in which the beneficiary becomes 62 years of age.

(b) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING STANDARD ANNUITY UNDER SBP.—In the case of a person providing a standard annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to the beneficiary under this subchapter shall be the amount equal to 5, 10, 15, or 20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity. The annuity shall be computed as of the date of the death of the person providing the annuity, notwithstanding that the annuity is not payable at that time by reason of subsection (a).

(c) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING RESERVE-COMPONENT ANNUITY UNDER SBP.—In the case of a person providing a reserve-component annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to that beneficiary under this subchapter shall be determined as follows:

(1) BENEFICIARY INITIALLY 62 YEARS OF AGE OR OLDER.—If the beneficiary is 62 years of age or older when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity is the difference between—

(A) the amount of the reserve-component annuity under the Survivor Benefit Plan to which the beneficiary would be entitled if that beneficiary were under 62 years of age (as computed under section 1451(a)(2)(A) of this title); and

(B) the amount of the reserve-component annuity to which the beneficiary is entitled (as computed under section 1451(a)(2)(B) of this title).

(2) BENEFICIARY INITIALLY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity of that beneficiary (commencing on the date specified in subsection (a)(2)) is the amount by which the beneficiary's annuity under the Survivor Benefit Plan is reduced (on the same day) under section 1451(d) of this title.

(3) EXCLUSION OF DIC OFFSET.—Computations under paragraphs (1) and (2) shall be made without regard to any reduction required under section 1450(c) of this title (or any other provision of law) with respect to the receipt of dependency and indemnity compensation under section 1311 of title 38.

(d) ADJUSTMENTS IN ANNUITIES.—

(1) PERIODIC ADJUSTMENTS (COLAS).—Whenever annuities under the Survivor Benefit Plan are increased under section 1451(g)(1) of this title (or any other provision of law) or recomputed under section 1451(i) of this title, each annuity under this subchapter shall be increased or recomputed at the same time. The increase shall, in the case of any such annuity, be by the same percent as the percent by which the annuity of that beneficiary is increased or recomputed under the Survivor Benefit Plan.

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(e) TERMINATION OF ANNUITY.—A supplemental spouse annuity terminates effective as of the first day of the month in which the beneficiary dies or otherwise becomes ineligible to continue to receive an annuity under the Survivor Benefit Plan.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1580; amended Pub. L. 102–190, div. A, title VI, § 653(b)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 103–337, div. A, title X, § 1070(e)(5), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Subsec. (c)(3). Pub. L. 103–337 substituted ''section 1311 of title 38'' for ''section 411 of title 38''.

1991—Subsec. (b). Pub. L. 102–190 substituted ''5, 10, 15, or 20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity'' for ''20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 653(b)(3) of Pub. L. 102–190 provided that: ''The amendments made by this subsection [amending this section and section 1460 of this title] shall take effect on April 1, 1992.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1460 of this title.

§ 1458. Supplemental spouse coverage: eligible participants; elections of coverage

(a) COVERAGE.—

(1) IN GENERAL.—A person who provides an annuity for a spouse or former spouse under the Survivor Benefit Plan at the maximum level may elect in accordance with this section to provide a supplemental spouse annuity for that spouse or former spouse.

(2) COVERAGE CONTINGENT ON CONCURRENT SBP COVERAGE.—When a person providing a supplemental spouse annuity under this subchapter ceases to be a participant under the Survivor

Benefit Plan, that person's coverage under this subchapter automatically terminates.

(3) ELECTIONS TO BE VOLUNTARY.—A person may not be ordered or required to elect (or to enter into an agreement to elect) to provide a spouse or former spouse with a supplemental spouse annuity under this subchapter. Except as provided in section 1459(b) of this title, in no case shall a person be deemed to have made an election to provide a supplemental annuity for a spouse or former spouse of such person.

(b) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under this section if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan will be computed under section 1451(e) of this title. However, such a person may waive the right to have that annuity computed under section 1451(e) of this title. Any such election is irrevocable. A person making such a waiver may make an election under this section as in the case of any other participant in the Survivor Benefit Plan.

(c) ELECTION OF SUPPLEMENTAL SPOUSE ANNUITY BEFORE BECOMING A PARTICIPANT IN SBP.—

(1) IN GENERAL.—A person anticipating becoming a participant in the Survivor Benefit Plan who has a spouse or former spouse may elect to provide a supplemental spouse annuity under this subchapter for that spouse or former spouse.

(2) CONDITIONS ON ELECTION.—An election under paragraph (1)—

(A) must be made before the day on which the person making the election first becomes a participant in the Survivor Benefit Plan; and

(B) shall be made in the same manner as an election under section 1448 of this title that is available to that person at the same time.

(3) REQUIREMENT OF SPOUSE ANNUITY UNDER SBP.—If upon becoming a participant in the Survivor Benefit Plan under section 1448 of this title the person is not providing an annuity for the person's spouse or former spouse, an election under this section to provide a supplemental spouse annuity shall be void.

(4) SPECIAL RULE FOR RCSBP PARTICIPANTS.—For the purposes of this subsection, a person providing a reserve-component annuity under the Survivor Benefit Plan shall not be considered to have become a participant in that Plan until the end of the 90-day period referred to in clause (iii) of section 1448(a)(2)(B) of this title.

(d) ELECTION OF FORMER SPOUSE AFTER BECOMING ELIGIBLE FOR SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF COVERAGE.—A person who elects under section 1448(b)(3) of this title to provide coverage under the Survivor Benefit Plan for a former spouse may elect to provide a supplemental spouse annuity for that former spouse. Any such election must be signed by the person and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(2) EFFECTIVE DATE OF ELECTION.—An election under paragraph (1) is effective as of the same day as the election under section 1448(b)(3) of this title.

(e) NOTICE TO SPOUSE OF FORMER SPOUSE COVERAGE.—If a married person who is eligible to provide an annuity under the Survivor Benefit Plan elects to provide an annuity under that Plan for a former spouse (or for a former spouse and dependent child) and elects under this section to provide a supplemental spouse annuity for that former spouse, the notification to the person's spouse under section 1448(a)(3)(E) or 1448(b)(3)(D) of this title shall include notice of the election under this section.

(f) IRREVOCABILITY OF ELECTIONS.—

(1) STANDARD ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a standard annuity under the Survivor Benefit Plan is irrevocable if not revoked on the day before the date on which the person first becomes a participant in that Plan.

(2) RESERVE-COMPONENT ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a reserve-component annuity under the Survivor Benefit Plan is irrevocable if not revoked before the end of the 90-day period with respect to that person referred to in clause (iii) of section 1448(a)(2)(B) of this title.

(3) FORMER SPOUSE ELECTIONS.—An election under subsection (d) may not be revoked except in accordance with subsection (h).

(g) REMARRIAGE AFTER RETIREMENT.—

(1) ELECTION UPON REMARRIAGE.—A person—

(A) who is a participant in the Survivor Benefit Plan and is providing coverage under that Plan for a spouse (or a spouse and child) but is not a participant in the Supplemental Survivor Benefit Plan;

(B) who does not have an eligible spouse beneficiary under that Plan; and

(C) who remarries,

may (subject to paragraph (2)) elect to provide a supplemental spouse annuity under this subchapter for the person's spouse.

(2) LIMITATIONS ON ELECTION.—A person may not make an election under paragraph (1) if the person elects under section 1448(a)(6)(A) of this title not to provide coverage under the Survivor Benefit Plan for the person's spouse.

(3) CONDITIONS ON ELECTION.—An election under paragraph (1)—

(A) is irrevocable;

(B) shall be made within one year after the remarriage; and

(C) shall be made in such form and manner as may be prescribed in regulations under section 1460b of this title.

(h) CHANGE OF FORMER SPOUSE BENEFICIARY TO SPOUSE OR CHILD BENEFICIARY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter elects under section 1450(f)(1) of this title to change the beneficiary of the annuity under the Survivor Benefit Plan in order to provide an annuity under that Plan to that person's spouse or to a dependent child—

(1) the beneficiary under the supplemental spouse annuity shall be deemed to be changed to that spouse also, if the change under section 1450(f)(1) was to provide the annuity for the person's spouse; and

(2) participation in the supplemental spouse annuity program shall be terminated, if the change under section 1450(f)(1) of this title was to provide the annuity for a dependent child.

(i) REINSTATEMENT OF DISCONTINUED ANNUITY UPON REINSTATEMENT OF SBP ANNUITY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter discontinues participation in the Survivor Benefit Plan under any provision of law and subsequently resumes participation in that Plan under any provision of law, the participation of that person in the Supplemental Survivor Benefit Plan under this chapter shall be reinstated effective on the day on which participation in the Survivor Benefit Plan resumes.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1581; amended Pub. L. 102–190, div. A, title VI, § 653(c)(1), Dec. 5, 1991, 105 Stat. 1388.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–190 inserted ''at the maximum level'' after ''Survivor Benefit Plan''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1459 of this title.

§ 1459. Former spouse coverage: special rules

(a) DISCLOSURE OF VOLUNTARY WRITTEN AGREEMENT WITH FORMER SPOUSE.—A person who elects under section 1458 of this title to provide a supplemental spouse annuity for a former spouse shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and former spouse) setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(b) ENFORCEMENT OF VOLUNTARY WRITTEN AGREEMENTS INCIDENT TO DIVORCE, ETC.—

(1) ELECTIONS DEEMED TO HAVE BEEN MADE.—If a person who is eligible to elect under section 1458 of this title to provide a supplemental spouse annuity for a former spouse voluntarily enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide a supplemental annuity for a former spouse and that agreement is incorporated in or ratified or approved by a court order or is filed with the court of appropriate jurisdiction in accordance with applicable State law, and such person then fails or refuses to make the election as set forth in the voluntary agreement, such person shall be deemed to have made the election if the Secretary concerned—

(A) receives from the former spouse concerned a written request, in such manner as the Secretary shall prescribe, requesting that the election be deemed to have been made; and

(B) receives (i) a copy of the court order, regular on its face, which incorporates, ratifies, or approves the written agreement of such person, or (ii) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(2) TIME LIMIT FOR REQUEST TO SECRETARY CONCERNED.—An election may not be deemed to have been made under paragraph (1) in the case of any person unless the Secretary concerned receives a request from the former spouse within one year after the date of the court order or filing involved.

(3) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under paragraph (1) shall become effective on the first day of the first month which begins after the date of the court order or filing involved.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1584.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1458 of this title.

§ 1460. Supplemental spouse coverage: reductions in retired pay

(a) REDUCTION REQUIRED.—The retired pay of a person who elects to provide a supplemental spouse annuity shall be reduced each month as required under regulations prescribed under subsection (b).

(b) REGULATIONS DETERMINING AMOUNT OF REDUCTION.—Regulations for the purposes of subsection (a) shall be prescribed by the Secretary of Defense. Those regulations shall be based upon assumptions used by the Department of Defense Retirement Board of Actuaries in the valuation of military retirement and survivor benefit programs under chapter 74 of this title (including assumptions relating to mortality, interest rates, and inflation) and shall ensure the following:

(1) That reductions in retired pay under this section are made in amounts sufficient to provide that the Supplemental Survivor Benefit Plan operates on an actuarially neutral basis.

(2) That such reductions are stated, with respect to the base amount (under the Survivor Benefit Plan) of any person, as a constant percentage of that base amount and, in the case of a person providing a supplemental spouse annuity computed under section 1457(b) of this title, a constant percentage of such person's base amount for each 5 percent increment specified in accordance with that section.

(3) That the amounts of such reductions in retired pay of persons participating in the Supplemental Survivor Benefit Plan (stated as a percentage of base amount)—

(A) are based on the age of the participant at the time participation in that Plan is first effective under this subchapter; and

(B) are not determined by any other demographic differentiation among participants in the Plan.

(4) That such reductions are otherwise determined in accordance with generally accepted actuarial principles and practices.

(c) SUSPENSION OF REDUCTION WHEN THERE IS NO SPOUSE BENEFICIARY.—A reduction in retired pay under this section shall not be made in the case of any person during any month in which there is no eligible spouse or former spouse beneficiary.

(d) ADJUSTMENTS IN AMOUNT OF REDUCTION.—Whenever the amount of the reduction in retired pay of a participant in the Survivor Benefit Plan is increased under section 1452(h) of this title or recomputed under section 1452(i) of this title, the amount of the reduction in that retired pay under this section shall be increased or recomputed, as the case may be, at the same time and in the same manner as that increase or recomputation.

(e) ADMINISTRATIVE PROVISIONS.—The provisions of subsections (d) and (f) of section 1452 of this title apply with respect to the participation of a person in the Supplemental Survivor Benefit Plan in the same manner that those provisions apply under the Survivor Benefit Plan.

(Added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1584; amended Pub. L. 102–190, div. A, title VI, §653(b)(2), Dec. 5, 1991, 105 Stat. 1388.)

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102–190 inserted before period ''and, in the case of a person providing a supplemental spouse annuity computed under section 1457(b) of this title, a constant percentage of such person's base amount for each 5 percent increment specified in accordance with that section''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Apr. 1, 1992, see section 653(b)(3) of Pub. L. 102–190, set out as a note under section 1457 of this title.

§1460a. Incorporation of certain administrative provisions

(a) APPLICABILITY OF CERTAIN PROVISIONS OF SBP LAW.—The provisions of sections 1449, 1452(g), 1453, and 1454 of this title are applicable to a person eligible to make an election, and to an election, under this subchapter in the same manner as if made under subchapter II.

(b) OTHER APPLICABLE PROVISIONS.—Except to the extent otherwise provided in regulations prescribed under section 1460b of this title, the provisions of subsections (h), (i), and (*l*) of section 1450 of this title apply to supplemental spouse annuities in the same manner that those provisions apply to annuities under the Survivor Benefit Plan.

(Added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1585; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(5), Nov. 5, 1990, 104 Stat. 1719.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510 substituted ''sections'' for ''section''.

§1460b. Regulations

The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services and shall, so far as practicable, incorporate provisions of the regulations in effect under section 1455 of this title.

(Added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1585.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1458, 1460a of this title.

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.
1461. Establishment and purpose of Fund; definition.
1462. Assets of Fund.
1463. Payments from the Fund.
1464. Board of Actuaries.
1465. Determination of contributions to the Fund.
1466. Payments into the Fund.
1467. Investment of assets of Fund.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1460 of this title; title 38 section 5301.

§1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under military retirement and survivor benefit programs.

(b) In this chapter, the term ''military retirement and survivor benefit programs'' means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay;

(2) the programs under the jurisdiction of the Department of Defense providing annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(3) the authority provided in section 1408(h) of this title.

(Added Pub. L. 98–94, title IX, §925(a)(1), Sept. 24, 1983, 97 Stat. 644; amended Pub. L. 101–189, div. A, title XVI, §1622(e)(7), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 102–484, div. A, title VI, §653(b)(1), Oct. 23, 1992, 106 Stat. 2428.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102–484 added par. (3).

1989—Subsec. (b). Pub. L. 101–189 inserted ''the term'' after ''In this chapter,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1408 of this title; title 37 section 203.

§ 1462. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1466 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

TRANSFER OF APPROPRIATIONS

Section 925(b)(3) of Pub. L. 98–94 provided that: ''There shall be transferred into the Fund on October 1, 1984, any unobligated balances of appropriations made to the Department of Defense that are currently available for retired pay, and amounts so transferred shall be part of the assets of the Fund.''

§ 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, and Marine Corps;

(2) retired pay payable under chapter 67[1] of this title to former members of the armed forces (other than retired pay payable by the Secretary of Transportation);

(3) retainer pay payable to members of the Fleet Reserve and Fleet Marine Corps Reserve;

(4) benefits payable under programs under the jurisdiction of the Department of Defense that provide annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(5) amounts payable under section 1408(h) of this title.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 101–189, div. A, title VI, § 651(c), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 102–484, div. A, title VI, § 653(b)(2), Oct. 23, 1992, 106 Stat. 2428; Pub. L. 103–35, title II, § 202(a)(4), May 31, 1993, 107 Stat. 101.)

REFERENCES IN TEXT

Chapter 67 of this title, referred to in subsec. (a)(2), was transferred to part II of subtitle E of this title, renumbered as chapter 1223, and amended generally by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998. A new chapter 67 (§ 1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

Section 4 of Public Law 92–425, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 653(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, as amended by Pub. L. 103–35, added par. (5).

1989—Subsec. (a). Pub. L. 101–189 substituted ''members'' for ''persons'' in par. (1), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section 925(b)(2) of Pub. L. 98–94 provided that: ''Sections 1463 (relating to payments from the Fund) and 1466 (relating to payments to the Fund) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984.''

§ 1464. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Retirement Board of Actuaries (hereinafter in this chapter referred to as the ''Board''). The Board shall consist of three members, who shall be appointed by the President from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the President for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this subsection, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the President at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1465(c) of this title and under chapter 95 of title 31 and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 98–525, title XIV, § 1405(27), Oct. 19, 1984, 98 Stat. 2623.)

[1] See References in Text note below.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–525 substituted section ''1465(c)'' for ''1466''.

EFFECTIVE DATE

Section 925(b)(1) of Pub. L. 98–94 provided that: ''Section 1464 (relating to the Board of Actuaries) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§1465. Determination of contributions to the Fund

(a) Not later than six months after the Board of Actuaries is first appointed, the Board shall determine the amount that is the present value (as of October 1, 1984) of future benefits payable from the Fund that are attributable to service in the armed forces performed before October 1, 1984. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level percentage of basic pay to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).

(B) The product of—

(i) the current estimate of the value of the single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) expected to be paid during that fiscal year to members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1466(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A).

Such single level percentages shall be used for the purposes of subsection (b) and section 1466(a) of this title.

(2) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) there has been a change in benefits under a military retirement or survivor benefit program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 646; amended Pub. L. 98–525, title XIV, § 1405(28), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–500, § 101(c) [title IX, § 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–128, and Pub. L. 99–591, § 101(c) [title IX, § 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–128; Pub. L. 99–661, div. A, title VI, § 661(a), Nov. 14, 1986, 100 Stat. 3891.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a), amended par. (1) identically, inserting second sentence and striking out the existing second sentence which read as follows: ''That amount shall be determined as the product of—

''(A) the current estimate of the value of the single level percentage of basic pay to be determined at the time of the next actuarial valuation under subsection (c); and

''(B) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.''

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a)(2), amended par. (1) identically, inserting second and third sentences and striking out existing second sentence which read as follows: ''Each actuarial valuation of such programs shall include a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay to be used for the purposes of subsection (b) and section 1466(a) of this title.''

1984—Subsec. (c)(1). Pub. L. 98–525 struck out ''(A)'' after ''(c)(1)''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 642(c) of S. 2638, as passed by the Senate on Aug. 9, 1986, and as enacted into law by section 101(c) [title IX, § 9131] of Pub. L. 99–500 and Pub. L. 99–591, and section 661(d) of Pub. L. 99–661, provided respectively that: ''The amendments made by this section [amending this section and section 1466 of this title] shall take effect on October 1, 1986, or the date of the enactment of this Act [Oct. 18, 1986], whichever is later, and shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by this section, for months beginning on or after that effective date.'' and ''The amendments made by subsections (a) and (b) [amending this section and section 1466 of this title] shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by subsection (b), for months beginning on or after the date of the enactment of this Act [Nov. 14, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1466 of this title.

§ 1466. Payments into the Fund

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the level percentage of basic pay determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(A) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay accrued for that month by members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).

(2) The product of—

(A) the level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(B) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) accrued for that month by members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in paragraph (1)(B).

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a) and 1465(c) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1465(a)

of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(Added Pub. L. 98–94, title IX, §925(a)(1), Sept. 24, 1983, 97 Stat. 647; amended Pub. L. 99–500, §101(c) [title IX, §§9103(3), 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, 1783–128, and Pub. L. 99–591, §101(c) [title IX, §§9103(3), 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, 3341–128; Pub. L. 99–661, div. A, title VI, §661(b), Nov. 14, 1986, 100 Stat. 3892; Pub. L. 100–26, §§4(a)(1), 7(a)(3), Apr. 21, 1987, 101 Stat. 274, 275.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by section 9131 of Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by section 9131 of Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–26, §7(a)(3), inserted at end "Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department."

Subsec. (a)(1)(B), (2)(B). Pub. L. 100–26, §4(a)(1), amended Pub. L. 99–500 and 99–591, title I, §101(c) [title IX, §9103(3)]. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–661 amended first sentence of subsec. (a), which after amendment by Pub. L. 99–500 and Pub. L. 99–591 was the only sentence of subsec. (a), by substituting language which was substantially identical to that substituted by Pub. L. 99–500 and Pub. L. 99–591.

Pub. L. 99–500 and Pub. L. 99–591, title I, §101(c) [§9131], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the product of—

"(1) the level percentage of basic pay determined under the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c) of this title; and

"(2) the total amount of basic pay paid that month to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department."

Subsec. (a)(1)(B), (2)(B). Pub. L. 99–500 and Pub. L. 99–591, title I, §101(c) [title IX, §9103(3)], as amended by Pub. L. 100–26, §4(a)(1), substituted "accrued for that month by" for "paid that month to" in pars. (1)(B) and (2)(B) as amended by section 661(b) of Pub. L. 99–661, see above.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(b) of Pub. L. 100–26 provided that: "The amendments made by section 4 [amending this section and provisions set out as a note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Laws 99–500 and 99–591 when enacted on October 18, 1986, and October 30, 1986, respectively."

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–661 applicable to payments required to be made under subsec. (a) of this section for months beginning on or after Nov. 14, 1986, see section 661(d) of Pub. L. 99–661, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, §9131] of Pub. L. 99–500 and Pub. L. 99–591 effective Oct. 18, 1986, and applicable to payments required to be made under subsec. (a) of this section for months beginning on or after that date, see section 642(c) of S. 2638, as enacted into law, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, §9103(3)] of Pub. L. 99–500 and Pub. L. 99–591 effective Sept. 1, 1987, see section 101(c) [title IX, §9103(4)] of Pub. L. 99–500 and Pub. L. 99–591, as amended, set out as an Effective Date note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1984, see section 925(b)(2) of Pub. L. 98–94, set out as a note under section 1463 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1462, 1465 of this title.

§1467. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–94, title IX, §925(a)(1), Sept. 24, 1983, 97 Stat. 648.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1175 of this title.

CHAPTER 75—DEATH BENEFITS

Sec.
1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.
1476. Death gratuity: death after discharge or release from duty or training.
1477. Death gratuity: eligible survivors.
1478. Death gratuity: amount.
1479. Death gratuity: delegation of determinations, payments.
1480. Death gratuity: miscellaneous provisions.
1481. Recovery, care, and disposition of remains: decedents covered.
1482. Expenses incident to death.
1482a. Expenses incident to death: civilian employees serving with an armed force.
1483. Prisoners of war and interned enemy aliens.

Sec.
1484. Pensioners, indigent patients, and persons who die on military reservations.
1485. Dependents of members of armed forces.
1486. Other citizens of United States.
1487. Temporary interment.
1488. Removal of remains.
1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties.
1490. Transportation of remains: certain retired members and dependents who die in military medical facilities.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title X, § 1070(a)(8)(B), Oct. 5, 1994, 108 Stat. 2855, substituted ''civilian'' for ''Civilian'' in item 1482a.

1993—Pub. L. 103–160, div. A, title III, § 368(b), Nov. 30, 1993, 107 Stat. 1634, added item 1482a.

1991—Pub. L. 102–190, div. A, title VI, § 626(b)(2), Dec. 5, 1991, 105 Stat. 1380, substituted ''Transportation of remains: certain retired members and dependents who die in military medical facilities'' for ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility'' in item 1490.

1983—Pub. L. 98–94, title X, § 1032(a)(2), Sept. 24, 1983, 97 Stat. 672, added item 1490.

1980—Pub. L. 96–450, title IV, § 403(b)(2), Oct. 14, 1980, 94 Stat. 1979, added item 1489.

1965—Pub. L. 89–150, § 1(2), Aug. 28, 1965, 79 Stat. 585, struck out ''; death while outside United States'' from item 1485.

1958—Pub. L. 85–861, § 1(32)(B), (C), Sept. 2, 1958, 72 Stat. 1455, struck out ''CARE OF THE DEAD'' from chapter heading, and added items 1475 to 1480.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a; title 42 section 213a.

§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

(2) a Reserve of an armed force who dies while on inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active duty for training, or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies while traveling directly to or from that active duty for training or inactive duty training;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 88–647, title III, § 301(1), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 96–513, title V, § 511(59), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–661, div. A, title VI, § 604(e)(1), Nov. 14, 1986, 100 Stat. 3877.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1475(a)	38:1101(2) (less last sentence, as applicable to death gratuity). 38:1101(4) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(5) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(6)(A) (less clause (3) of 2d sentence, as applicable to death gratuity). 38:1001(6)(B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii)) (as applicable to 38: 1133 (a))). 38:1101(11)(E) (less last 27 words, as applicable to death gratuity). 38:1131(a).	Aug. 1, 1956, ch. 837, §§ 102(2) (less last sentence, as applicable to death gratuity), 102(2) (last sentence, as applicable to death gratuity), (4) (as applicable to death gratuity, less (D) (as applicable to § 303(a))), (5) (as applicable to death gratuity, less (D) (as applicable to § 303(a))), (6)(A) (as applicable to death gratuity), (B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii) (as applicable to § 303(a))), (11)(E) (less last 27 words, as applicable to death gratuity), 301(a), 70 Stat. 858–861, 868.
1475(b)	38:1101(2) (last sentence, as applicable to death gratuity under 38: 1131(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1131 (a)).	

In subsection (a), the word ''receiving'' is inserted for clarity. Clause (1) is substituted for 38:1101(2) (1st sentence, and clauses (A)–(C) of 2d sentence); 38:1101(4)(A), (C), and (D); and 38:1101(5)(A), (C), and (D). Clause (2) is based on the words ''inactive duty training'', in 38:1131(a). Clause (3) (less words in parentheses) is substituted for 38:1101(6)(B) (1st sentence, less last 32 words). 38:1101(6)(A) (1st sentence) is omitted as covered by section 101(31) of this title. The words in parentheses in clause (3) are substituted for 38:1101(6)(A) (2d sentence, less clause (3)). Clause (4) is substituted for 38:1101(2) (clause (D) of 2d sentence) and (5)(C). Clause (5) is substituted for 38:1101(2)(E), (11)(E) (less last 27 words). The words ''active duty for training'', in 38:1131(a), are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1986—Subsec. (a)(3). Pub. L. 99–661 struck out ''from an injury incurred by him after December 31, 1956,'' before ''while traveling directly to or from''.

1980—Subsec. (a)(5)(B). Pub. L. 96–513 substituted ''Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''Universal Military Training and Service Act (50 App. U.S.C. 451 et seq.)''.

1964—Subsec. (a)(4). Pub. L. 88–647 inserted provisions covering applicants for membership in a reserve officers' training corps while attending, or in travel to or from field training or a practice cruise.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1478, 1479, 1480 of this title.

§1476. Death gratuity: death after discharge or release from duty or training

(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from—

(A) active duty; or

(B) inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).

(2) A death gratuity may be paid under paragraph (1) only if the Secretary of Veterans Affairs determines that the death resulted from an injury or disease incurred or aggravated during—

(A) the active duty or inactive-duty training described in paragraph (1); or

(B) travel directly to or from such duty.

(b) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Department of Veterans Affairs, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(c) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 99–661, div. A, title VI, §604(e)(2), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (2), Nov. 29, 1989, 103 Stat. 1602, 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1476(a)	38:1133(a).	Aug. 1, 1956, ch. 837, §§102(2) (last sentence, as applicable to death gratuity under §303(a)), 102(4)(D) (as applicable to §303(a)), 102(5)(D) (as applicable to §303(a)), 102(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under §303(a)), 102(6)(B)(ii) (as applicable to §303(a)), 303(a), (c), 70 Stat. 858, 859, 868, 869.
1476(b)	38:1101(4)(D) (as applicable to 38:1133(a)). 38:1101(5)(D) (as applicable to 38:1133(a)). 38:1101(6)(B)(ii) (as applicable to 38:1133(a)).	
1476(c).	38:1133(c).	
1476(d)	38:1101(2) (last sentence, as applicable to death gratuity under 38:1133(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1133(a)).	

In subsection (a), the words ''Except as provided in section 1480 of this title'' are inserted to reflect 38:1134(a). The words ''to the survivor prescribed by section 1477 of this title'' are inserted for clarity. The words ''on or after January 1, 1957'' are omitted as executed. The words in parentheses in clause (2) are inserted to reflect 38:1101(6)(A) (2d sentence). The words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

In subsection (c), the word ''criteria'' is omitted as covered by the word ''standards''.

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (b). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 added subsec. (a), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsecs. (a) and (b) which read as follows:

''(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title of each person who dies within 120 days after his discharge or release from—

''(1) active duty; or

''(2) inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

if the Administrator of Veterans' Affairs determines that the death resulted from (A) disease or injury incurred or aggravated while performing duty under

clause (1) or the travel described in subsection (b), or (B) injury incurred or aggravated while performing training under clause (2) or the travel described in subsection (b)(2).

''(b) The travel covered by subsection (a) is—

''(1) authorized travel to or from the duty described in subsection (a)(1); or

''(2) travel directly to or from the duty or training described in subsection (a)(1) or (2) that is performed by a Reserve who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform that duty or training and whose injury was incurred or aggravated after December 31, 1956.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CROSS REFERENCES

Certifications by Administrator, see section 1323 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1476, 1478, 1480 of this title; title 38 section 1323.

§ 1477. Death gratuity: eligible survivors

(a) A death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list:

(1) His surviving spouse.

(2) His children, as prescribed by subsection (b), in equal shares.

(3) If designated by him, any one or more of the following persons:

(A) His parents or persons in loco parentis, as prescribed by subsection (c).

(B) His brothers.

(C) His sisters.

(4) His parents or persons in loco parentis, as prescribed by subsection (c), in equal shares.

(5) His brothers and sisters in equal shares.

Clauses (3) and (5) of this subsection include brothers and sisters of the half blood and those through adoption.

(b) Subsection (a)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(c) Clauses (3) and (4) of subsection (a), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before he acquired a status described in section 1475 or 1476 of this title. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered that status.

(d) If an eligible survivor dies before he receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (a).

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1453; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1477(a)	38:1131(c) (less words in parentheses in clause (2)).	Aug. 1, 1956, ch. 837, §§ 102(7) (as applicable to death gratuity), 301(c), (d), 304(d), 70 Stat. 860, 868, 869.
	38:1134(d).	
1477(b).	38:1101(7) (as applicable to children and as applicable to death gratuity).	
	38:1131(c) (words in parentheses in clause (2)).	
1477(c)	38:1101(7) (less applicability to children, as applicable to death gratuity).	
1477(d)	38:1131(d).	

In subsection (a), the words ''highest on the following list'' are substituted for the words ''first listed below'', in 38:1131(c). The words ''as prescribed by subsection (b)'' are inserted in clause (2) to reflect that subsection. The words ''or persons in loco parentis, as prescribed by subsection (c)'' are inserted in clauses (3) (A) and (4) to reflect the fact that certain persons who are not parents in the normal sense are included as eligible survivors.

In subsection (d), the words ''the death gratuity'' are substituted for the words ''the amount to which he is entitled under this subchapter''. The words ''next in the order prescribed'' are substituted for the words ''first listed under''.

AMENDMENTS

1989—Subsec. (b)(5)(C). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1476, 1478, 1480 of this title.

§ 1478. Death gratuity: amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be $6,000. For this purpose:

(1) A person covered by subsection (a)(1) of section 1475 of this title who died while traveling to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a)(3) of section 1475 of this title who died while travel-

ing directly to or from inactive duty training is considered to have been on inactive duty training on the date of his death.

(4) A person covered by subsection (a)(4) of section 1475 of this title who died while performing annual training duty or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209(c) of title 37. A person covered by section 1475(a)(4) of this title who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209(c) of title 37.

(5) A person covered by subsection (a)(5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(6) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(7) A person covered by section 1475 or 1476 of this title who performed active duty, or inactive duty training, without pay is considered to have been entitled to basic pay while performing that duty or training.

(8) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or inactive duty training and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or inactive duty training, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1454; amended Pub. L. 88–647, title III, § 301(2), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 89–718, § 11, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 102–190, div. A, title VI, § 652(a), Dec. 5, 1991, 105 Stat. 1387.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1478(a)	38:1101(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity). 38:1101(10)(B) (as applicable to death gratuity). 38:1101(11)(E) (last 27 words, as applicable to death gratuity). 38:1131(b). 38:1133(d). 38:1134(c).	Aug. 1, 1956, ch. 837, §§ 102(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity), (10)(B) (as applicable to death gratuity), (11)(E) (last 27 words, as applicable to death gratuity), (12) (as applicable to death gratuity), 301(b), 303(d), 304(c), 70 Stat. 859—861, 868, 869.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1478(b)	38:1101(12) (as applicable to death gratuity).	

In subsection (a), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those types of pay. Clause (1) is inserted to reflect section 1475(a)(1) of this title. Clauses (2) and (3) are substituted for 38:1101(6)(B) (last 32 words of 1st sentence). Clause 4 is substituted for 38:1101(10)(B). The words ''to the pay prescribed by section 4385(c) or 9385(c) of this title'' are inserted to reflect those sections, which prescribe the training pay of members of reserve officers' training corps units. Clause (5) is substituted for 38:1101(11)(E) (last 27 words). Clause (6) is substituted for 38:1133(d). In clause (6), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those kinds of pay. Clauses (7) and (8) are substituted for 38:1134(c). In those clauses, the words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title. In clause (8), the words ''and who became entitled to basic pay'' are substituted for the words ''and is placed in a pay status'' and the words ''is entitled to that pay'' are substituted for the words ''remains in a pay status''.

In subsection (b), the words ''on or after January 1, 1957'' are omitted as executed. The words ''(other than for training)'' are inserted, since the words ''active duty'' in the source statute did not include active duty for training. The words ''is considered to continue on that duty'' are substituted for the words ''shall be deemed to continue on active duty''. The last sentence is substituted for 38:1101(12) (last 14 words).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190, in first sentence, substituted ''1475 through 1477'' for ''1475–1477'' and ''$6,000'' for ''equal to six months' pay at the rate to which the decedent was entitled on the date of his death, except that the gratuity may not be less than $800 of more than $3,000.''

1966—Subsec. (a)(4). Pub. L. 89–718 struck out '', United States Code'' after ''title 37'' in two places.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted ''the first sentence of section 209(c) of title 37, United States Code'' for ''section 4385(c) or 9385(c) of this title'', and provided that a person covered by section 1475(a)(4) of this title who dies in field training or on a practice cruise, or in travel to or from such training or cruise, is considered entitled on the day of his death to the pay prescribed by the second sentence of section 209(c) of Title 37.

EFFECTIVE DATE OF 1991 AMENDMENT; TRANSITION PROVISION

Section 652(b) of Pub. L. 102–190 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect as of August 2, 1990.

''(2) In the case of the payment of a death gratuity under sections 1475 through 1477 of title 10, United States Code, with respect to a person who died during the period beginning on August 2, 1990, and ending on the date of the enactment of this Act [Dec. 5, 1991], the amount of the death gratuity under section 1478(a) of such title (as amended by subsection (a)) shall be reduced by the amount of any such gratuity paid with respect to such person under this section (as in effect on August 1, 1990).''

TEMPORARY INCREASE IN AMOUNT OF DEATH GRATUITY; PERSIAN GULF CONFLICT

Pub. L. 102–25, title III, § 307, Apr. 6, 1991, 105 Stat. 82, provided that: ''In lieu of the amount of the death gra-

tuity specified in section 1478(a) of title 10, United States Code, the amount of the death gratuity payable under that section shall be $6,000 for a death resulting from any injury or illness incurred during the Persian Gulf conflict or during the 180-day period beginning at the end of the Persian Gulf conflict.''

DEATH GRATUITY FOR CERTAIN PARTICIPANTS WHO DIED BETWEEN AUGUST 1, 1990, AND APRIL 6, 1991

Pub. L. 102–25, title III, § 308, Apr. 6, 1991, 105 Stat. 83, provided that:

''(a) PAYMENT OF DEATH GRATUITY.—Subject to subsections (b) and (c), the Secretary of Defense shall pay a death gratuity to each SGLI beneficiary of each deceased member of the uniformed services who died after August 1, 1990, and before the date of the enactment of this Act [Apr. 6, 1991], and whose death was in conjunction with or in support of Operation Desert Storm, or attributable to hostile action in regions other than the Persian Gulf, as prescribed in regulations set forth by the Secretary of Defense.

''(b) AMOUNT AND DISTRIBUTION OF GRATUITY.—The amount of the death gratuity payable to an SGLI beneficiary in the case of a deceased member of the uniformed services under this section shall be equal to the Servicemen's Group Life Insurance paid or payable to such beneficiary under subchapter III of chapter 19 of title 38, United States Code, by reason of the death of such member.

''(c) APPLICATION FOR GRATUITY REQUIRED.—A death gratuity shall be payable to an SGLI beneficiary under this section upon receipt of a written application therefor by the Secretary of Defense within one year after the date of the enactment of this Act [Apr. 6, 1991].

''(d) REGULATIONS.—The Secretary shall prescribe in regulations the form of the application for benefits under this section and any procedures and requirements that the Secretary considers necessary to carry out this section.

''(e) DEFINITIONS.—In this section:

''(1) The term 'SGLI beneficiary', with respect to a deceased member of the uniformed services, means a person to whom Servicemen's Group Life Insurance is paid or payable under subchapter III of chapter 19 of title 38, United States Code, by reason of the death of such member.

''(2) The term 'Secretary concerned' has the meaning given that term in section 101(25) of title 38, United States Code.''

§ 1479. Death gratuity: delegation of determinations, payments

For the purpose of making immediate payments under section 1475 of this title, the Secretary concerned shall—

(1) authorize the commanding officer of a territorial command, installation, or district in which a survivor of a person covered by that section is residing to determine the beneficiary eligible for the death gratuity; and

(2) authorize a disbursing or certifying official of each of those commands, installations, or districts to make the payments to the beneficiary, or certify the payments due them, as the case may be.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1479	38:1132.	Aug. 1, 1956, ch. 837, § 302, 70 Stat. 868.

The word ''territorial'' is substituted for the words ''military or naval'', since the subsection could only apply to that type of command, installation, or district. Clause (2) is substituted for 38:1132(2).

AMENDMENTS

1982—Par. (2). Pub. L. 97–258 substituted ''official'' for ''officer''.

§ 1480. Death gratuity: miscellaneous provisions

(a) A payment may not be made under sections 1475–1477 of this title if the decedent was put to death as lawful punishment for a crime or a military offense, unless he was put to death by a hostile force with which the armed forces of the United States were engaged in armed conflict.

(b) A payment may not be made under section 1476 unless the Secretary of Veterans Affairs determines that the decedent was discharged or released, as the case may be, under conditions other than dishonorable from the last period of the duty or training that he performed.

(c) For the purposes of section 1475(a)(3) of this title, the Secretary concerned shall determine whether the decedent was authorized or required to perform the duty or training and whether or not he died from injury so incurred. For the purposes of section 1476 of this title, the Secretary of Veterans Affairs shall make those determinations. In making those determinations, the Secretary concerned or the Secretary of Veterans Affairs, as the case may be, shall consider—

(1) the hour on which the Reserve began to travel directly to or from the duty or training;

(2) the hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) the method of travel used;

(4) the itinerary;

(5) the manner in which the travel was performed; and

(6) the immediate cause of death.

In cases covered by this subsection, the burden of proof is on the claimant.

(d) Payments under sections 1475–1477 of this title shall be made from appropriations available for the payment of members of the armed force concerned.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), (5), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1480(a)	38:1134(a).	Aug. 1, 1956, ch. 837, §§ 102(6)(B) (less 1st sentence, as applicable to death gratuity) 303(e), 304(a), (b), 70 Stat. 859, 869.
1480(b)	38:1133(e).	
1480(c)	38:1101(6)(B) (less 1st sentence, as applicable to death gratuity).	
1480(d).	38:1134(b).	

In subsection (a), the words ''was put to death'' are substituted for the words ''suffered death''. The words ''or naval'' are omitted as covered by the word ''military''.

In subsection (b), the words ''last period * * * that he performed'' are substituted for the words ''such period''.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, § 1621(a)(2), (5), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' after ''section 1476 of this title, the'' and ''the Secretary concerned or the Secretary of Veterans Affairs'' for ''the Secretary or the Administrator''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1476 of this title.

§ 1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force, or member of an armed force without component, under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) on active duty;

(B) performing inactive-duty training;

(C) performing authorized travel directly to or from active duty or inactive-duty training; or

(D) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training.

[(3) Repealed. Pub. L. 99–661, div. A, title VI, § 604(e)(3)(B), Nov. 14, 1986, 100 Stat. 3877.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) Any retired member of an armed force under his jurisdiction who becomes a patient in a United States hospital while he is on active duty for a period of more than 30 days, and who continues to be such a patient until the date of his death.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(g) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(b) This section applies to each person covered by subsection (a)(1)–(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 112; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(3), 78 Stat. 1071; Nov. 14, 1986, Pub. L. 99–661, div. A, title VI, § 604(e)(3), 100 Stat. 3877; Oct. 5, 1994, Pub. L. 103–337, div. A, title VI, § 652(a)(1), 108 Stat. 2793.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1481(a)	5:2151 (as applicable to armed forces). 5:2152 (1st 27 words, as applicable to armed forces). 5:2153 (less 1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§ 1, 2 (1st 25 words, as applicable to armed forces), 3 (less 1st 16 words, as applicable to armed forces), 4 (as applicable to armed forces), 68 Stat. 478.
1481(b)	5:2154 (as applicable to armed forces).	

In subsection (a), 5:2151 is omitted as covered by the revised sections of this chapter. In clauses (1), (2), (5)–(7), the words ''under his jurisdiction'' are inserted for clarity. In clause (1) the words ''regular member of an armed force, or member of an armed force without component'' are substituted for the words ''military personnel'', since all other members of the military services are covered by more specific rules set forth in clauses (2) and (7). In clauses (2) and (3), the words ''active duty for training'' are omitted as covered by the words ''active duty''. The words ''injury incurred, or disease contracted'' are substituted for the words ''injuries, illness, or disease contracted or incurred''. The words ''by law'', ''authorized'', ''proper authority'', and ''as authorized by law'' are omitted as surplusage. In clause (3), the words ''while entitled to'' are substituted for the words ''in respect of duty for which they are entitled by law to receive''. In clause (4), the words ''injury incurred, or disease contracted'' are substituted for the words ''injury, disease or illness contracted or incurred''. The words ''as authorized by law'' are omitted as surplusage. In clause (6), the word ''person'' is substituted for the words ''former enlisted members''. In clause (7), the words ''active duty for a period of more than 30 days'' are substituted for the words ''extended active duty''.

In subsection (b), the words ''This section applies to each person * * * even though'' are substituted for the words ''The benefits of this Act shall not be denied in respect of a person * * * on the ground''.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 652(a)(1)(A), substituted ''the remains of the following persons:'' for ''the remains of—'', capitalized the first letter of the first word in pars. (1) to (8), substituted a period for the last semicolon in pars. (1) to (6), substituted a period for ''; and'' in par. (7), and added par. (9).

Subsec. (c). Pub. L. 103–337, § 652(a)(1)(B), added subsec. (c).

1986—Subsec. (a)(2), (3). Pub. L. 99–661 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

''(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;''.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted '', or applicant for membership in, a reserve officers' train-

ing corps'' for ''the Army Reserve Officers' Training Corps, Naval Reserve Officers' Training Corps, or Air Force Reserve Officers' Training Corps''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 652(a)(3) of Pub. L. 103–337 provided that: ''The amendments made by this subsection [amending this section and section 1482 of this title] shall apply with respect to the remains of, and incidental expenses incident to the recovery, care, and disposition of, an individual who dies after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CROSS REFERENCES

American Battle Monuments Commission, see section 121 et seq. of Title 36, Patriotic Societies and Observances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1482, 1490 of this title.

§ 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

(1) Recovery and identification of the remains.

(2) Notification to the next of kin or other appropriate person.

(3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.

(4) Furnishing of a uniform or other clothing.

(5) Furnishing of a casket or urn, or both, with outside box.

(6) Hearse service.

(7) Funeral director's services.

(8) Transportation of the remains, and roundtrip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized.

(9) Interment of the remains.

(10) Presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody of the Secretary and while under a sentence that includes a discharge.

(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent. For the purpose of this paragraph, the term ''parent'' includes a natural parent, a stepparent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this paragraph shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) Only the following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The surviving spouse of the decedent.

(2) Blood relatives of the decedent.

(3) Adoptive relatives of the decedent.

(4) If no person covered by clauses (1)–(3) can be found, a person standing in loco parentis to the decedent.

(d) When, as a result of a disaster involving the multiple deaths of persons covered by section 1481 of this title, the Secretary concerned has possession of commingled remains that cannot be individually identified, and burial of those remains in a common grave in a national cemetery is considered necessary, he may, for the interment services of each known decedent, pay the expenses of round-trip transportation to the cemetery of (1) the person who would have been designated under subsection (c) to direct disposition of the remains if individual identification had been made, and (2) two additional persons selected by that person who are closely related to the decedent. The transportation expenses authorized to be paid under this subsection may not exceed the transportation allowances authorized for members of the armed forces for travel on official business, but no per diem allowance may be paid.

(e) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the mem-

ber has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(f) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

(1) was a member of the Ready Reserve; or

(2) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under 12731[1] of this title.

(g) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned shall pay all other expenses authorized to be paid under this subsection only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113; Aug. 21, 1958, Pub. L. 85–716, 72 Stat. 708; Sept. 1, 1970, Pub. L. 91–397, 84 Stat. 837; Oct. 22, 1970, Pub. L. 91–487, 84 Stat. 1086; May 28, 1974, Pub. L. 93–292, 88 Stat. 176; Jan. 8, 1975, Pub. L. 93–649, 88 Stat. 2361; Nov. 29, 1989, Pub. L. 101–189, div. A, title VI, §§ 652(a)(3), 653(a)(6), title XVI, § 1622(c)(4), 103 Stat. 1461, 1462, 1604; Oct. 5, 1994, Pub. L. 103–337, div. A, title VI, § 652(a)(2), title XVI, § 1671(c)(8), 108 Stat. 2793, 3014.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1482(a)	5:2152 (less 1st 27 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§ 2 (less 1st 25 words, as applicable to armed forces), 3 (1st 16 words, as applicable to armed forces), 11 (as applicable to armed forces), 12 (as applicable to armed forces), 68 Stat. 478, 480, 481.
	5:2153 (1st 18 words, as applicable to armed forces).	
1482(b).	5:2161 (as applicable to armed forces).	
1482(c).	5:2162 (as applicable to armed forces).	

In subsection (a), the list of payable expenses has been rearranged to produce a generally chronological result. The words "person designated" are substituted for the words "person recognized as the person."

In subsection (a)(4), the words "articles of" are omitted as surplusage.

In subsection (a)(8), the word "place" is substituted for the words "town or city".

In subsection (a)(10), the words "other than honorable" are omitted, since a person cannot be sentenced to an honorable discharge.

In subsection (b), the words "If an individual pays" are substituted for the words "In any case where expenses * * * are borne by individuals". The second sentence of 5:2161 is omitted as executed. The last sentence is substituted for the last sentence of 5:2161.

In subsection (c), 5:2162 (1st sentence) is omitted since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The introductory language is substituted for 5:2162 (1st 22 words of 2d sentence). The words "ascertained and" are omitted as surplusage.

AMENDMENTS

1994—Subsec. (f)(2). Pub. L. 103–337, § 1671(c)(8), substituted "section 12732" for "section 1332" and "12731" for "section 1331".

Subsec. (g). Pub. L. 103–337, § 652(a)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–189, § 653(a)(6)(A), substituted "expenses of the following:" for "expenses of—" in introductory provisions.

Subsec. (a)(1) to (9). Pub. L. 101–189, § 653(a)(6)(B), (C), in each of pars. (1) to (9), capitalized first letter of first word and substituted period for semicolon at the end.

Subsec. (a)(10). Pub. L. 101–189, § 653(a)(6)(B), (D), capitalized first letter of first word and substituted period for "; and".

Subsec. (a)(11). Pub. L. 101–189, § 653(a)(6)(B), (E), capitalized first letter of first word, substituted "paragraph" for "clause" in four places, and substituted "decedent. For the" for "decedent; for the".

Subsec. (e). Pub. L. 101–189, §§ 652(a)(3), 1622(c)(4), substituted "the date of death" for "the effective date of this subsection, or the date of death," and "chapter 10 of title 37" for "chapter 10, title 37" in last sentence.

1975—Subsec. (e). Pub. L. 93–649 inserted provision relating to date of notification of death under authority of chapter 10, title 37, to that person who would have been designated under subsection (c) to direct disposition of the remains, had they been recovered.

1974—Subsec. (f). Pub. L. 93–292 added subsec. (f).

1970—Subsec. (a)(11). Pub. L. 91–397 added cl. (11).

Subsec. (e). Pub. L. 91–487 added subsec. (e).

1958—Subsec. (d). Pub. L. 85–716 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 652(a)(2) of Pub. L. 103–337 applicable with respect to remains of, and incidental expenses incident to recovery, care, and disposition of, an individual who dies after Oct. 5, 1994, see section 652(a)(3) of Pub. L. 103–337, set out as a note under section 1481 of this title.

Amendment by section 1671(c)(8) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CROSS REFERENCES

Flags, see section 2301 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1481, 1482a, 1490 of this title; title 38 section 2301.

§ 1482a. Expenses incident to death: civilian employees serving with an armed force

(a) PAYMENT OF EXPENSES.—The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

[1] So in original. Probably should be preceded by "section".

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Transportation shall prescribe regulations to implement this section with regard to civilian employees of the Department of Transportation. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) DEFINITIONS.—In this section:

(1) The term ''civilian employee'' means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term ''contingency operation'' includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term ''parent'' has the meaning given such term in section 1482(a)(11) of this title.

(4) The term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(Added Pub. L. 103–160, div. A, title III, § 368(a), Nov. 30, 1993, 107 Stat. 1633; amended Pub. L. 103–337, div. A, title X, § 1070(a)(8)(A), Oct. 5, 1994, 108 Stat. 2855.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''civilian'' for ''Civilian'' in section catchline.

EFFECTIVE DATE

Section 368(c) of Pub. L. 103–160 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to the payment of incidental expenses for civilian employees who die while serving in a contingency operation that occurs after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1483. Prisoners of war and interned enemy aliens

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to the cemetery or other place selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1483	5:2155 (as applicable to armed forces).	July 15, 1954, ch. 507, § 5 (as applicable to armed forces), 68 Stat. 479.

The list of payable expenses has been rearranged to produce a generally chronological result. The words ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. In clause (5), the words ''cemetery or other place'' are substituted for the words ''town, city, or cemetery''.

§ 1484. Pensioners, indigent patients, and persons who die on military reservations

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to a cemetery selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1484	5:2156 (as applicable to armed forces).	July 15, 1954, ch. 507, § 6 (as applicable to armed forces), 68 Stat. 479.

The words ''If proper disposition of the remains cannot otherwise be made'' are substituted for 5:2156 (last sentence). The words ''maintained and'' and ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. The words ''of that department'' are inserted for clarity.

§ 1485. Dependents of members of armed forces

(a) The Secretary concerned may, if a dependent of a member of an armed force dies while the member is on active duty (other than for training), provide for, and pay the necessary expenses of, transporting the remains of the deceased dependent to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114; Aug. 28, 1965, Pub. L. 89–150, § 1(1), 79 Stat. 585.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1485(a)	5:2157 (1st sentence, as applicable to armed forces).	July 15, 1954, ch. 507, § 7(a) (as applicable to armed forces), 68 Stat. 479.
1485(b).	5:2157 (2d sentence, as applicable to armed forces).	
1485(c)	5:2157 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the words ''a member of an armed force'' are substituted for the words ''military personnel''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by the definition of ''United States'' in section 101(1) of this title. The words ''while traveling'' are substituted for the words ''while in transit''.

In subsection (b), the word ''services'' is substituted for the word ''facilities''.

In subsection (c), the words ''the authority of'' and ''the payments of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

AMENDMENTS

1965—Pub. L. 89–150 struck out ''; death while outside United States'' in section catchline.

Subsec. (a). Pub. L. 89–150 substituted provision for payment of transportation expenses of remains of deceased dependent of a member of an armed force while the member is on active duty (other than for training), for former provision for payment of the expenses where the member of the armed force is on active duty at a place outside the United States and the dependent dies while residing with that member or while traveling to or from that place.

§ 1486. Other citizens of United States

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from non-appropriated funds.

(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this section, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services, supplies, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1486(a)	5:2158 (1st sentence as applicable to armed forces).	July 15, 1954, ch. 507, § 8 (as applicable to armed forces), 68 Stat. 480.
1486(b).	5:2158 (2d sentence, as applicable to armed forces).	
1486(c)	5:2158 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the word ''services'' is substituted for the word ''facilities''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by definition of ''United States'' in section 101(1) of this title. In clause (3), the word ''masters'' is omitted as covered by the word ''officer''. In clause (4), the words ''under the jurisdiction of the Secretary'' are inserted for clarity. In clause (5), the words ''otherwise covered'' are substituted for the words ''specifically enumerated''. In clause (6), the words ''who is covered'' are substituted for the words ''within the classes enumerated''. The words ''outside the United States'' are substituted for the word ''abroad''. The words ''that person'' are substituted for the words ''the supporting citizen concerned''.

In subsection (b), the word ''Government'' is omitted as surplusage.

In subsection (c), the words ''the authority of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

§ 1487. Temporary interment

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1487	5:2159 (as applicable to armed forces).	July 15, 1954, ch. 507, § 9 (as applicable to armed forces), 68 Stat. 480.

The words ''as authorized by this chapter, section 103a(c) of this Title, and section 224 of Title 42'', ''by purchase or otherwise'', ''care and'', and ''single or multiple'' are omitted as surplusage. The word ''continental'' is omitted as covered by the definition of ''United States'' in section 101(1) of this title.

§ 1488. Removal of remains

If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery. With respect to any deceased member of an armed force

under his jurisdiction whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1488	5:2160 (as applicable to armed forces).	July 15, 1954, ch. 507, § 10 (as applicable to armed forces), 68 Stat. 480.

The words ''national cemeteries, other installation cemeteries, or'' are omitted as surplusage.

§ 1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties

(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the armed forces or of any employee of the Department of Defense—

(1) who—

(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such a member or employee is disguised or concealed; or

(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

(2) who after October 14, 1980 dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(b) Any payment under subsection (a)—

(1) shall be in an amount equal to the amount of the annual basic pay or salary of the member or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by this chapter or any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973).

(Added Pub. L. 96–450, title IV, § 403(b)(1), Oct. 14, 1980, 94 Stat. 1979; amended Pub. L. 97–22, § 11(a)(6), July 10, 1981, 95 Stat. 138; Pub. L. 98–94, title XII, § 1268(9), Sept. 24, 1983, 97 Stat. 706; Pub. L. 99–145, title XIII, § 1303(a)(12), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted ''armed forces'' for ''Armed Forces''.

1983—Subsec. (a)(2). Pub. L. 98–94 substituted ''October 14, 1980'' for ''the date of the enactment of this section''.

1981—Subsec. (b)(3). Pub. L. 97–22 substituted ''section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973)'' for ''section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a)''.

§ 1490. Transportation of remains: certain retired members and dependents who die in military medical facilities

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces located in the United States, the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place outside the United States or to a place further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

(2) Transportation of the remains of a decedent may not be provided under this section if such transportation is authorized by sections 1481 and 1482 of this title or by chapter 23 of title 38.

(c) In this section:

(1) The term ''United States'' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

(2) The term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Added Pub. L. 98–94, title X, § 1032(a)(1), Sept. 24, 1983, 97 Stat. 671; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. A, title VI, § 626(a), (b)(1), Dec. 5, 1991, 105 Stat. 1379, 1380.)

AMENDMENTS

1991—Pub. L. 102–190, § 626(b)(1), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility''.

Subsec. (a). Pub. L. 102–190, § 626(a)(1), inserted '', or a dependent of such a member,'' after ''equivalent pay''.

Subsec. (c). Pub. L. 102–190, § 626(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''In this section, the term 'United States' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.''

1987—Subsec. (c). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE

Section 1032(b) of Pub. L. 98–94 provided that: ''Section 1490 of title 10, United States Code, as added by subsection (a), shall apply with respect to the transportation of the remains of persons dying after September 30, 1983.''

CHAPTER 77—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.
1521. Posthumous commissions.
1522. Posthumous warrants.
1523. Posthumous commissions and warrants: effect on pay and allowances.
1524. Posthumous commissions and warrants: determination of date of death.

AMENDMENTS

1966—Pub. L. 89–718, § 12(a)(2), Nov. 2, 1966, 80 Stat. 1117, added item 1524.

§ 1521. Posthumous commissions

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death in line of duty;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death in line of duty; or

(3) was officially recommended for appointment or promotion to a commissioned grade and the recommendation for whose appointment or promotion was approved by the Secretary concerned but was unable to accept the promotion or appointment because of death in line of duty.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or approval, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or approval to the date of his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1521(a)	10:491a (words before semicolon). 10:491b (words before semicolon). 10:491c (words before semicolon). 34:285b (words before semicolon). 34:285c (words before semicolon). 34:285d (words before semicolon).	July 28, 1942, ch. 528, §§1–3, 56 Stat. 722, 723; July 17, 1953, ch. 220, §1(a)–(c), 67 Stat. 176.
1521(b)	10:491a (words after semicolon). 10:491b (words after semicolon). 10:491c (words after semicolon). 34:285b (words after semicolon). 34:285c (words after semicolon). 34:285d (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:491a, 491b, 491c, and 34:285b, 285c, and 285d. The words ''armed forces'' are substituted for the words ''military service of the United States'', in 10:491a, 491b, and 491c; and the words ''naval service of the United States'', in 34:285b, 285c, and 285d (which did not appear in the source statute for the revised section, as amended by the Act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words ''to such grade'', in 10:491a and 34:285b, ''receive or'', in 10:491c and 34:285d, are omitted as surplusage.

In subsection (b), the words ''if any'' are substituted for words ''of the service''. The words ''appointment and'', in 10:491b and 34:285c, and ''appointment or promotion and'', in 10:491c and 34:285d, are omitted as surplusage.

DETERMINATION OF DATE OF DEATH UNDER MISSING PERSONS ACT

Section 5 of act July 28, 1942, ch. 528, as added July 17, 1953, ch. 220, §1(e), 67 Stat. 177, which provided that for purposes of this chapter, in any case where the date of death is established under the Missing Persons Act, as amended, the date of death is the date of receipt by the head of the department concerned of evidence that the person is dead, or the date the finding of death is made under section 5 of that Act, was repealed by Pub. L. 89–718, §12(b), Nov. 2, 1966, 80 Stat. 1117. See section 1524 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1524 of this title.

§ 1522. Posthumous warrants

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death in line of duty.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1522(a)	10:612 (words before semicolon). 34:285e (words before semicolon).	July 28, 1942, ch. 528, §4, 56 Stat. 723; July 17, 1953, ch. 220, §1 (a)–(d), 67 Stat. 176.
1522(b)	10:612 (words after semicolon). 34:285e (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:612 and 34:285e. The words ''armed forces'' are substituted for the words ''the military service of the United States'', in 10:612; and ''the naval service of the United States'', in 34:285e (which did not appear in the source statute for the revised section, as amended by the act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words ''other than a commissioned grade'' are substituted for the words ''noncommissioned grade'' to make it clear that the revised section covers warrant officers. The words ''receive or'' are omitted as surplusage.

In subsection (b), the words ''appointment or promotion'', ''and branch of the service'', ''official'', and ''by such warrant'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1524 of this title.

§ 1523. Posthumous commissions and warrants: effect on pay and allowances

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1523	10:491d. 34:285f.	July 28, 1942, ch. 528, § 6, 56 Stat. 723; July 17, 1953, ch. 220, § 1(e) (1st 7 words), 67 Stat. 177.

The word ''receive'' is omitted as surplusage. The words ''because of a posthumous commission or warrant'' are substituted for the words ''by virtue of any provision of sections 491a–491d [285b–285d] and 612 [285e] of this title'', in 10:491d and 34:285f.

CROSS REFERENCES

Promotion of persons in missing status, see section 552 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 552.

§ 1524. Posthumous commissions and warrants: determination of date of death

For the purposes of sections 1521 and 1522 of this title, in any case where the date of death is established or determined under section 551–558 of title 37, the date of death is the date the Secretary concerned receives evidence that the person is dead, or the date the finding of death is made under section 555 of title 37.

(Added Pub. L. 89–718, § 12(a)(1), Nov. 2, 1966, 80 Stat. 1117.)

CHAPTER 79—CORRECTION OF MILITARY RECORDS

Sec.
1551. Correction of name after separation from service under an assumed name.
1552. Correction of military records: claims incident thereto.
1553. Review of discharge or dismissal.
1554. Review of retirement or separation without pay for physical disability.

AMENDMENTS

1962—Pub. L. 87–651, title I, § 110(b), Sept. 7, 1962, 76 Stat. 510, substituted ''discharge or dismissal'' for ''discharges or dismissals'' in item 1553, and ''retirement or separation without pay for physical disability'' for ''decisions of retiring boards and similar boards'' in item 1554.

1958—Pub. L. 85–857, § 13(v)(3), Sept. 2, 1958, 72 Stat. 1268, added items 1553 and 1554.

§ 1551. Correction of name after separation from service under an assumed name

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, or Marine Corps honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1551	5:200. 34:597.	Apr. 14, 1890, ch. 80; restated June 25, 1910, ch. 393, 36 Stat. 824. Aug. 22, 1912, ch. 329, 37 Stat. 324.

The word ''shall'' is substituted for the words ''is authorized and required''. The word ''separated'' is substituted for the word ''discharged'', since the revised section covers acceptances of resignations as well as certificates of discharge. The words ''enlisted or'' and ''while minors or otherwise'' are omitted as surplusage. The words ''the War of the Rebellion'' are omitted as obsolete. The word ''with'' is substituted for the words ''between the United States and''. The words ''honorably or under honorable conditions'' are substituted for the word ''honorably''.

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Transportation may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for pay-

ment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; June 29, 1960, Pub. L. 86–533, § 1(4), 74 Stat. 246; Pub. L. 96–513, title V, § 511(60), Dec. 12, 1980, 94 Stat. 2925; Dec. 6, 1983, Pub. L. 98–209, § 11(a), 97 Stat. 1407; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1233(a), 102 Stat. 2057; Nov. 29, 1989, Pub. L. 101–189, div. A, title V, § 514, title XVI, § 1621(a)(2), 103 Stat. 1441, 1603; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1052(19), 106 Stat. 2500.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1552(a)	5:191a(a) (less 2d and last provisos). 5:275(a) (less 2d and last provisos).	Aug. 2, 1946, ch. 753, § 207; restated Oct. 25, 1951, ch. 588, 65 Stat. 655.
1552(b)	5:191a(a) (2d and last provisos). 5:275(a) (2d and last provisos).	
1552(c)	5:191a(b), (c). 5:275(b), (c).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1552(d)	5:191a(d). 5:275(d).	
1552(e)	5:191a(f). 5:275(f).	
1552(f)	5:191a(e). 5:275(e).	

In subsection (a), the words ''and approved by the Secretary of Defense'' are substituted for 5:191a(a) (1st proviso). The words ''when he considers it'' are substituted for the words ''where in their judgment such action is'', in 5:191a and 275. The words ''officers or employees'' and ''means of'', in 5:191a and 275, are omitted as surplusage. The word ''naval'', in 5:191a and 275, is omitted as covered by the word ''military''.

In subsection (b), the words ''before October 26, 1961'' are substituted for the words ''or within ten years after the date of enactment of this section'', in 5:191a and 275. The last sentence of the revised subsection is substituted for 5:191a(a) (last proviso) and 275(a) (last proviso).

In subsection (c), the words ''if, as a result of correcting a record under this section * * * the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be'' are substituted for the words ''which are found to be due on account of military or naval service as a result of the action * * * hereafter taken pursuant to subsection (a) of this section'', in 5:191a and 275. The words ''heretofore taken pursuant to this section'', in 5:191a and 275, are omitted as executed. The words ''of any persons, their heirs at law or legal representative as hereinafter provided'', ''(including retired or retirement pay)'', ''as the case may be'', ''duly appointed'', ''otherwise due hereunder'', ''decedent's'', ''precedence or succession'', and ''of precedence'', in 5:191a and 275, are omitted as surplusage. The last sentence is substituted for 5:191a(c) and 275(c).

In subsection (d), the word ''but'' is substituted for the words ''That, continuing payments are authorized to be made to such personnel'', in 5:191a and 275. The words ''if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate'' are substituted for the words ''without the necessity for reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached'', in 5:191a and 275. The words ''or one year following the date of enactment of this section'', in 5:191a and 275, are omitted as executed. The words ''for payment of such sums as may be due for'', in 5:191a and 275, are omitted as surplusage. The words ''(including retired or retirement pay)'', in 5:191a and 275, are omitted as covered by the definition of ''pay'' in section 101(27) of this title.

In subsection (e), the words ''No payment may be made under this section'' are substituted for the words ''Nothing in this section shall be construed to authorize the payment of any amount as compensation'', in 5:191a and 275.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (f), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–484 substituted ''announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision

not to promote an enlisted member to a higher grade'' for ''announcing a decision not to promote an enlisted member to a higher grade''.

1989—Subsec. (a). Pub. L. 101–189, § 514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.''

Subsec. (b). Pub. L. 101–189, § 514(b), substituted ''subsection (a)(1)'' for ''subsection (a)'' in two places.

Subsec. (e). Pub. L. 101–189, § 1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1988—Subsec. (b). Pub. L. 100–456, § 1233(a)(1), substituted ''for the correction within three years after he discovers the error or injustice'' for ''therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later''.

Subsec. (c). Pub. L. 100–456, § 1233(a)(2), substituted ''The Secretary concerned'' for ''The department concerned''.

1983—Subsec. (f). Pub. L. 98–209 added subsec. (f).

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1960—Subsec. (f). Pub. L. 86–533 repealed subsec. (f) which required reports to the Congress every six months with respect to claims paid under this section.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

BOARD FOR CORRECTION OF MILITARY RECORDS

Pub. L. 101–225, title II, § 212, Dec. 12, 1989, 103 Stat. 1914, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 12, 1989], the Secretary of Transportation shall—

''(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

''(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.''

CROSS REFERENCES

Correction of discharge, see section 3462 of Title 38, Veterans' Benefits.

Effective dates of awards, see section 5110 of Title 38.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1034, 14502 of this title; title 38 sections 3462, 5110; title 42 section 213a.

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1266; amended Pub. L. 87–651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 509; Pub. L. 98–209, § 11(b), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

1989—Subsecs. (a), (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1983—Subsec. (a). Pub. L. 98–209 inserted provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

CROSS REFERENCES

Correction of discharge, see section 3462 of Title 38, Veterans' Benefits.

Effective date of benefits awarded, see section 5110 of Title 38.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1034 of this title; title 38 sections 3462, 5110, 5303; title 42 section 213a.

§ 1554. Review of retirement or separation without pay for physical disability

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in his case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85–857, § 13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended Pub. L. 87–651, title I, § 110(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

[CHAPTER 80—REPEALED]

[§§ 1571 to 1577. Repealed. Pub. L. 90–83, § 3(2), Sept. 11, 1967, 81 Stat. 220]

Sections, Pub. L. 89–690, § 1, Oct. 15, 1966, 80 Stat. 1016, created Exemplary Rehabilitation Certificates to be issued by the Secretary of Labor to persons discharged or dismissed from the Armed Forces under conditions other than honorable or to persons who had received a general discharge but who had established that they had rehabilitated themselves and established the administrative and other authority in connection therewith. See chapter 13 of Title 29, Labor.

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.
[1580. Repealed.]
1581. Foreign National Employees Separation Pay Account.
[1582. Repealed.]
1583. Employment of certain persons without pay.
1584. Employment of non-citizens.
1585. Carrying of firearms.
1586. Rotation of career-conditional and career employees assigned to duty outside the United States.
1587. Employees of nonappropriated fund instrumentalities.
1588. Authority to accept certain voluntary services.
1589. Prohibition on payment of lodging expenses when adequate Government quarters are available.
1590. Management of civilian intelligence personnel of the military departments.
1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress.
1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.
1593. Uniform allowance: civilian employees.
1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay.
1595. Civilian faculty members at certain Department of Defense schools: employment and compensation.
1596. Foreign language proficiency: special pay.
1597. Civilian positions: guidelines for reductions.
1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides.
1599. Postemployment assistance: certain terminated intelligence employees.

AMENDMENTS

1994—Pub. L. 103–359, title VIII, § 806(a)(2), Oct. 14, 1994, 108 Stat. 3442, added item 1599.

1993—Pub. L. 103–160, div. A, title IX, § 923(a)(2), Nov. 30, 1993, 107 Stat. 1731, substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University; Foreign Language Center of the Defense Language Institute: civilian faculty members'' in item 1595.

1992—Pub. L. 102–484, div. A, title III, § 371(b), title IX, § 923(a)(2)(B), div. D, title XLIV, § 4442(b), Oct. 23, 1992, 106 Stat. 2384, 2474, 2732, substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in item 1595, substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' in item 1597, and added item 1598.

1991—Pub. L. 102–190, div. A, title X, § 1003(a)(2), Dec. 5, 1991, 105 Stat. 1456, added item 1581.

Pub. L. 102–25, title VII, § 701(e)(4), (8)(B), Apr. 6, 1991, 105 Stat. 114, 115, substituted ''Employment of non-citi-

zens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in item 1584 and struck out ''mandatory'' after ''error in'' in item 1594.

1990—Pub. L. 101–510, div. A, title III, § 322(a)(2), title XIV, § 1484(a), Nov. 5, 1990, 104 Stat. 1529, 1715, redesignated item 1592 ''Foreign language proficiency: special pay'' as item 1596 and added item 1597.

1989—Pub. L. 101–193, title V, § 501(a)(2), Nov. 30, 1989, 103 Stat. 1708, added item 1592 ''Foreign language proficiency: special pay''.

Pub. L. 101–189, div. A, title III, §§ 311(b)(2), 336(a)(2), title VI, § 664(b)(2), title XI, § 1124(a)(2), Nov. 29, 1989, 103 Stat. 1412, 1419, 1467, 1558, added item 1592 ''Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.'', and items 1593 to 1595.

1987—Pub. L. 100–180, div. A, title VI, § 617(b)(2), Dec. 4, 1987, 101 Stat. 1097, added item 1591.

1986—Pub. L. 99–569, title V, § 504(b), Oct. 27, 1986, 100 Stat. 3199, added item 1590.

1984—Pub. L. 98–525, title XIV, § 1401(f)(2), Oct. 19, 1984, 98 Stat. 2618, added item 1589.

1983—Pub. L. 98–94, title XII, §§ 1253(a)(2), 1266(b), Sept. 24, 1983, 97 Stat. 700, 705, added items 1587 and 1588.

1982—Pub. L. 97–295, § 1(19)(B), (20)(C), Oct. 12, 1982, 96 Stat. 1290, struck out items 1581 ''Appointment: professional and scientific services'' and 1582 ''Professional and scientific services: reports to Congress on appointments'', and substituted ''pay'' for ''compensation'' in item 1583.

1966—Pub. L. 89–718, § 13, Nov. 2, 1966, 80 Stat. 1117, struck out item 1580 ''Appointment generally''.

1962—Pub. L. 87–651, title II, § 206(b), Sept. 7, 1962, 76 Stat. 520, added item 1580.

1960—Pub. L. 86–585, § 2, July 5, 1960, 74 Stat. 327, added item 1586.

1958—Pub. L. 85–577, § 1(2), July 31, 1958, 72 Stat. 456, added item 1585.

[§ 1580. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663]

Section, added Pub. L. 87–651, title II, § 206(a), Sept. 7, 1962, 76 Stat. 519, related to appointment of civilian employees by the Secretary of Defense.

§ 1581. Foreign National Employees Separation Pay Account

(a) ESTABLISHMENT AND PURPOSE.—There is established on the books of the Treasury an account to be known as the ''Foreign National Employees Separation Pay Account, Defense''. The account shall be used for the accumulation of funds to finance obligations of the United States for separation pay for foreign nationals referred to in subsection (e).

(b) DEPOSITS INTO ACCOUNT.—(1) The Secretary of the Treasury shall deposit into the account all amounts that were obligated by the Secretary of Defense before December 5, 1991, and that remain unexpended for separation pay for foreign nationals referred to in subsection (e).

(2) The Secretary of Defense shall deposit into the account from applicable appropriations all amounts obligated on or after December 5, 1991, for separation pay for foreign nationals referred to in subsection (e).

(c) PAYMENTS FROM ACCOUNT.—Amounts in the account shall remain available for expenditure in accordance with the purpose for which obligated until expended.

(d) DEOBLIGATED FUNDS.—Any amount in the account that is deobligated shall be available for a period of two years from the date of deobligation for recording, adjusting, and liquidating amounts properly chargeable to the liability of the United States for which the obligation was made. Any such deobligated amount remaining at the end of such two-year period shall be canceled.

(e) EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense, and foreign nationals employed by a foreign government for the benefit of the Department of Defense, under any of the following agreements that provide for payment of separation pay:

(1) A contract.

(2) A treaty.

(3) A memorandum of understanding with a foreign nation.

(Added Pub. L. 102–190, div. A, title X, § 1003(a)(1), Dec. 5, 1991, 105 Stat. 1456; amended Pub. L. 102–484, div. A, title X, § 1052(20), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title III, § 346, Oct. 5, 1994, 108 Stat. 2724.)

PRIOR PROVISIONS

A prior section 1581, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, § 1(34), 72 Stat. 1456; May 29, 1959, Pub. L. 86–36, § 3, 73 Stat. 63; Sept. 23, 1959, Pub. L. 86–377, § 2, 73 Stat. 701; Oct. 4, 1961, Pub. L. 87–367, title II, § 203, 75 Stat. 790; Oct. 11, 1962, Pub. L. 87–793, § 1001(b), 76 Stat. 863, provided for appointment of a limited number of civilian research and development personnel and prescribed their relationship to civil service provisions, prior to repeal by Pub. L. 97–295, § 1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–337, § 346(1), substituted ''foreign nationals referred to in subsection (e)'' for ''foreign national employees of the Department of Defense'' wherever appearing.

Subsec. (e). Pub. L. 103–337, § 346(2), added subsec. (e) and struck out former subsec. (e) which read as follows: ''EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense under any of the following agreements that provide for payment of separation pay:

''(1) A contract.

''(2) A treaty.

''(3) A memorandum of understanding with a foreign nation.''

1992—Subsec. (b)(1), (2). Pub. L. 102–484 substituted ''December 5, 1991,'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1592 of this title.

[§ 1582. Repealed. Pub. L. 97–295, § 1(19)(A), Oct. 12, 1982, 96 Stat. 1290]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, § 1(35), 72 Stat. 1456; Sept. 23, 1959, Pub. L. 86–377, § 3, 73 Stat. 701, directed Secretary of Defense to report annually to Congress on civilian research and development personnel employed by Department of Defense under former section 1581 of this title.

§ 1583. Employment of certain persons without pay

The Secretary of Defense may employ, without pay, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and

not more than $15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Nov. 2, 1966, Pub. L. 89–718, §14, 80 Stat. 1117; Oct. 12, 1982, Pub. L. 97–295, §1(20)(A), (B), 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1583(a)	5:171v (less words of 1st sentence after semicolon).	Jan. 6, 1951, ch. 1213, subch. VII, §704, 64 Stat. 1235.
1583(b)	5:171v (words of 1st sentence after semicolon).	

AMENDMENTS

1982—Pub. L. 97–295 substituted ''pay'' for ''compensation'' in section catchline and text.

1966—Pub. L. 89–718 struck out designation ''(a)'' at beginning of section and repealed subsec. (b) which authorized the Secretary, by regulation, to exempt persons employed under provisions formerly designated subsec. (a) from former sections 281, 283, 284, 434, and 1914 of title 18 and former section 99 of title 5.

§1584. Employment of non-citizens

(a) WAIVER OF EMPLOYMENT RESTRICTIONS FOR CERTAIN PERSONNEL.—Laws prohibiting the employment of, or payment of pay or expenses to, a person who is not a citizen of the United States do not apply to personnel of the Department of Defense.

(b) NOTICE TO CONGRESS OF CERTAIN SALARY INCREASES.—The Secretary of Defense shall notify the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives when any salary increase granted to direct and indirect hire foreign national employees of the Department of Defense overseas, stated as a percentage, is greater than the higher of the following percentages:

(1) The percentage pay increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5.

(2) The percentage increase provided to national government employees of the host nation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Oct. 12, 1982, Pub. L. 97–295, §1(20)(A), 96 Stat. 1290; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, §§1481(d)(1), (2), 1482(b), 104 Stat. 1706, 1709.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1584	5:235c. 5:475h. 5:628c.	July 16, 1952, ch. 882, §2, 66 Stat. 725.

The words ''appointment or'' are omitted as surplusage.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (b) of this section were contained in Pub. L. 100–463, title VIII, §8114, Oct. 1, 1988, 102 Stat. 2270–38, which was set out as a note below, prior to repeal by Pub. L. 101–510, §1481(d)(4)(A).

AMENDMENTS

1990—Pub. L. 101–510, §1482(b), substituted ''personnel of the Department of Defense'' for ''any expert, scientist, technician, or professional person whose employment in connection with the research and development activities of a military department is determined to be necessary by the Secretary of that department'' in subsec. (a).

Pub. L. 101–510, §1481(d)(1), (2), substituted ''Employment of non-citizens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

1982—Pub. L. 97–295 substituted ''pay'' for ''compensation''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1482(b) of Pub. L. 101–510 effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as a note under section 119 of this title.

CITIZENSHIP REQUIREMENT NOT APPLICABLE

Act Sept. 30, 1994, Pub. L. 103–335, title VIII, §8002, 108 Stat. 2616, provided that: ''During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act [see Tables for classification] shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.''

Similar provisions were contained in the following prior appropriation acts:

Nov. 11, 1993, Pub. L. 103–139, title VIII, §8002, 107 Stat. 1437.

Oct. 6, 1992, Pub. L. 102–396, title IX, §9002, 106 Stat. 1900.

Nov. 26, 1991, Pub. L. 102–172, title VIII, §8002, 105 Stat. 1170.

Nov. 5, 1990, Pub. L. 101–511, title VIII, §8002, 104 Stat. 1873.

Nov. 21, 1989, Pub. L. 101–165, title IX, §9003, 103 Stat. 1129.

Oct. 1, 1988, Pub. L. 100–463, title VIII, §8003, 102 Stat. 2270–17.

Dec. 22, 1987, Pub. L. 100–202, §101(b) [title VIII, §8004], 101 Stat. 1329–43, 1329–62.

Oct. 18, 1986, Pub. L. 99–500, §101(c) [title IX, §9004], 100 Stat. 1783–82, 1783–101, and Oct. 30, 1986, Pub. L. 99–591, §101(c) [title IX, §9004], 100 Stat. 3341–82, 3341–101.

Dec. 19, 1985, Pub. L. 99–190, §101(b) [title VIII, §8004], 99 Stat. 1185, 1202.

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h)[title VIII, §8004], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, §704, 97 Stat. 1437.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c), [title VII, §704], 96 Stat. 1833, 1349.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 704, 95 Stat. 1578.
Dec. 15, 1980, Pub. L. 96–527, title VII, § 704, 94 Stat. 3080.
Dec. 21, 1979, Pub. L. 96–154, title VII, § 704, 93 Stat. 1152.
Oct. 13, 1978, Pub. L. 95–457, title VIII, § 804, 92 Stat. 1243.
Sept. 21, 1977, Pub. L. 95–111, title VIII, § 803, 91 Stat. 899.
Sept. 22, 1976, Pub. L. 94–419, title VII, § 703, 90 Stat. 1290.
Feb. 9, 1976, Pub. L. 94–212, title VII, § 703, 90 Stat. 168.
Oct. 8, 1974, Pub. L. 93–437, title VIII, § 803, 88 Stat. 1224.
Jan. 2, 1974, Pub. L. 93–238, title VII, § 703, 87 Stat. 1038.
Oct. 26, 1972, Pub. L. 92–570, title VII, § 703, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, § 703, 85 Stat. 726.
Jan. 11, 1971, Pub. L. 91–668, title VIII, § 803, 84 Stat. 2029.
Dec. 29, 1969, Pub. L. 91–171, title VI, § 603, 83 Stat. 479.
Oct. 17, 1968, Pub. L. 90–580, title V, § 502, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 602, 81 Stat. 241.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 602, 80 Stat. 990.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 602, 79 Stat. 873.
Aug. 19, 1964, Pub. L. 88–446, title V, § 502, 78 Stat. 474.
Oct. 17, 1963, Pub. L. 88–149, title V, § 502, 77 Stat. 263.
Aug. 9, 1962, Pub. L. 87–577, title V, § 502, 76 Stat. 327.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 602, 75 Stat. 375.
July 7, 1960, Pub. L. 86–601, title V, § 502, 74 Stat. 349.
Aug. 18, 1959, Pub. L. 86–166, title V, § 602, 73 Stat. 378.
Aug. 22, 1958, Pub. L. 85–724, title VI, § 602, 72 Stat. 723.
Aug. 2, 1957, Pub. L. 85–117, title VI, § 602, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, § 602, 70 Stat. 467.
July 13, 1955, ch. 358, title VI, § 603, 69 Stat. 314.
June 30, 1954, ch. 432, title VII, § 703, 68 Stat. 349.
Aug. 1, 1953, ch. 305, title VI, § 603, 67 Stat. 349.
July 10, 1952, ch. 630, title VI, § 603, 66 Stat. 531.
Oct. 18, 1951, ch. 512, title VI, § 603, 65 Stat. 444.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 603, 64 Stat. 752.
Oct. 29, 1949, ch. 787, title VI, § 603, 63 Stat. 1017.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 553.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 28, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.

SALARY INCREASES TO FOREIGN NATIONAL EMPLOYEES; NOTICE TO CONGRESS

Pub. L. 100–463, title VIII, § 8114, Oct. 1, 1988, 102 Stat. 2270–38, which directed Secretary of Defense to notify House and Senate Committees on Appropriations when salary increases granted to foreign national employees were at a rate in excess of the percentage pay increase authorized by law for civilian employees of Department of Defense whose pay was computed under section 5332 of title 5 or at a rate in excess of the percentage increase provided to National Government employees of the host nation, whichever was higher, was repealed and restated in subsec. (b) of this section by Pub. L. 101–510, § 1481(d)(1)(B), (4)(A).

CROSS REFERENCES

Citizenship requirement for Federal employees compensated from appropriated funds, see section 3101 note of Title 5, Government Organization and Employees.

Department of Navy, employment of aliens by, see section 7473 of this title.

Research and development contracts, delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2356 of this title.

§ 1585. Carrying of firearms

Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.

(Added Pub. L. 85–577, § 1(1), July 31, 1958, 72 Stat. 455.)

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

(a) In order to advance the programs and activities of the Defense Establishment, it is hereby declared to be the policy of the Congress to facilitate the interchange of civilian employees of the Defense Establishment between posts of duty in the United States and posts of duty outside the United States through the establishment and operation of programs for the rotation, to the extent consistent with the missions of the Defense Establishment and sound principles of administration, of such employees who are assigned to duty outside the United States.

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

(1) who, while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States,

(2) who satisfactorily completes such duty, and

(3) who applies, not later than 30 days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c).

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3), or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than 30 days after the date on which he is determined to be immediately available to exercise such right in accordance with the following provisions:

(1) The employee shall be placed in the position which he held immediately before his as-

signment to duty outside the United States, if such position exists.

(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States.

(3) If the positions described in paragraph (1) and paragraph (2) do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of 90 days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within 90 days after his placement in a position under paragraph (3) a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the 90-day period referred to in paragraphs (3) and (4), the employee cannot be placed in a position under paragraph (4), he shall be reassigned or separated under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph (1)) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) In this section:

(1) The term ''rotation'' means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States.

(2) The term ''grade'' means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(h) The Secretary of Defense may, under such regulations as he may prescribe, make the provisions of subsections (a) through (g) applicable to civilian employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico at the time of their employment by the Department of Defense in the same manner as if the references in such subsections to the United States (when used in a geographical sense) were references to Guam, the Virgin Islands, or the Commonwealth of Puerto Rico, as the case may be.

(Added Pub. L. 86–585, §1, July 5, 1960, 74 Stat. 325; amended Pub. L. 89–718, §15, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, §3(3), Sept. 11, 1967, 81 Stat. 220; Pub. L. 96–513, title V, §511(61), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 96–600, §1, Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–295, §1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–525, title XIV, §1405(29), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 101–189, div. A, title XVI, §1622(e)(4), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsec. (g). Pub. L. 101–189, in introductory provisions, substituted ''In this section:'' for ''For the purposes of this section—'', in par. (1), inserted ''The term'' before '' 'rotation' '' and substituted the period for ''; and'', and in par. (2), inserted ''The term'' before '' 'grade' ''.

1984—Subsec. (b). Pub. L. 98–525, §1405(29)(A)(iii), in provisions following par. (3) struck out ''of this subsection'' after ''paragraphs (2) and (3)''.

Subsec. (b)(3). Pub. L. 98–525, §1405(29)(A)(i), (ii), substituted ''30'' for ''thirty'' and struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–525, §1405(29)(B)(i), in provisions preceding par. (1) substituted ''30'' for ''thirty''.

Subsec. (c)(3). Pub. L. 98–525, §1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (2)''.

Subsec. (c)(4). Pub. L. 98–525, §1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (3)''.

Subsec. (c)(5). Pub. L. 98–525, § 1405(29)(B)(iii)–(v), substituted ''90-day'' for ''ninety-day'', struck out ''of this subsection'' after ''paragraphs (3) and (4)'', and struck out ''such'' before ''paragraph (4)''.

Subsec. (c)(6). Pub. L. 98–525, § 1405(29)(B)(vi), struck out ''of this subsection'' after ''paragraph (1)'' and ''of this subsection,'' after ''as applicable,''.

Subsec. (d). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (c)''.

Subsec. (e)(1). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (c)(1)''.

Subsec. (e)(2). Pub. L. 98–525, § 1405(29)(D), struck out ''of this subsection'' after ''paragraph (1)''.

Subsec. (g)(1). Pub. L. 98–525, § 1405(29)(C), struck out ''of this section'' after ''subsection (b)''.

1982—Subsecs. (d), (e)(1). Pub. L. 97–295 substituted ''pay'' for ''compensation'' wherever appearing.

1980—Subsecs. (c)(5), (e)(2). Pub. L. 96–513 substituted ''Office of Personnel Management'' for ''United States Civil Service Commission''.

Subsec. (h). Pub. L. 96–600 added subsec. (h).

1967—Subsec. (g)(2). Pub. L. 90–83 substituted ''General Schedule as prescribed in section 5104 of title 5'' for ''compensation schedule for the General Schedule of the Classification Act of 1949, as amended,''.

1966—Pub. L. 89–718 substituted ''sections 3501–3503 of title 5'' for ''section 12 of the Act of June 27, 1944 (5 U.S.C. 861)'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EX. ORD. NO. 10895. DUTY IN ALASKA OR HAWAII

Ex. Ord. No. 10895, Nov. 25, 1960, 25 F.R. 12165, provided:

By virtue of the authority vested in me by section 1586(f) of title 10 of the United States Code, and as President of the United States, and having determined that such action is necessary in the national interest, it is ordered as follows:

SECTION 1. Assignment of an employee to duty in the State of Alaska or Hawaii under regulations prescribed pursuant to section 1586 of title 10 of the United States Code shall be held and considered for the purposes of that section, to be an assignment to duty outside the United States.

SEC. 2. The Secretary of Defense shall from time to time, and at least annually, consider the need for continuing this order in effect, and he shall recommend the revocation thereof at such time as he may deem such action advisable.

DWIGHT D. EISENHOWER.

§ 1587. Employees of nonappropriated fund instrumentalities

(a) In this section:

(1) The term ''nonappropriated fund instrumentality employee'' means a civilian employee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(2) The term ''civilian employee'' has the meaning given the term ''employee'' by section 2105(a) of title 5.

(3) The term ''personnel action'', with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regu-

lations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b).

(Added Pub. L. 98–94, title XII, §1253(a)(1), Sept. 24, 1983, 97 Stat. 699; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

EFFECTIVE DATE

Section 1253(b) of Pub. L. 98–94 provided that: ''Section 1587 of such title [this section], as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs after the date of the enactment of this Act [Sept. 24, 1983].''

UNIFORM HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF DEPARTMENT OF DEFENSE ASSIGNED TO NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 103–337, div. A, title III, §349, Oct. 5, 1994, 108 Stat. 2727, provided that:

''(a) IN GENERAL.—Not later than October 1, 1995, the Secretary of Defense shall take such steps as may be necessary to provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department.

''(b) PROGRESS REPORT.—Not later than March 15, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on the progress made by the Secretary in implementing subsection (a).''

§1588. Authority to accept certain voluntary services

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(b) REQUIREMENTS AND LIMITATIONS.—(1) The Secretary concerned shall notify the person of the scope of the services accepted.

(2) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned shall—

(A) supervise the person to the same extent as the Secretary would supervise a compensated employee providing similar services; and

(B) ensure that the person is licensed, privileged, has appropriate credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(3) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned may not—

(A) place the person in a policy-making position; or

(B) except as provided in subsection (e), compensate the person for the provision of such services.

(c) AUTHORITY TO RECRUIT AND TRAIN PERSONS PROVIDING SERVICES.—The Secretary concerned may recruit and train persons to provide voluntary services accepted under subsection (a).

(d) STATUS OF PERSONS PROVIDING SERVICES.—(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

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

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(C) Section 522a of title 5 (relating to maintenance of records on individuals).

(D) Chapter 11 of title 18 (relating to conflicts of interest).

(2) Subject to paragraph (3), while providing a nonappropriated fund instrumentality of the United States with voluntary services accepted under subsection (a), or receiving training under subsection (c) to provide such an instrumentality with services accepted under subsection (a), a person shall be considered an employee of that instrumentality only for the following purposes:

(A) Subchapter II of chapter 81 of title 5 (relating to compensation of nonappropriated fund employees for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(3) A person providing voluntary services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) or (2) only with respect to services that are within the scope of the services so accepted.

(4) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5 (pursuant to this subsection) to a person providing voluntary services accepted under subsection (a), the monthly pay of the person for such services shall be deemed to be the amount determined by multiplying—

(A) the average monthly number of hours that the person provided the services, by

(B) the minimum wage determined in accordance with section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary concerned may provide for reimbursement of a person for incidental expenses incurred by the person in providing voluntary services accepted under subsection (a). The Secretary shall determine which expenses are eligible for reimbursement under this subsection. Any such reimbursement may be made from appropriated or nonappropriated funds.

(Added Pub. L. 98–94, title XII, § 1266(a), Sept. 24, 1983, 97 Stat. 704; amended Pub. L. 99–145, title XVI, § 1624(a), Nov. 8, 1985, 99 Stat. 778; Pub. L. 99–661, div. A, title XIII, § 1355, Nov. 14, 1986, 100 Stat. 3996; Pub. L. 100–26, § 3(9), Apr. 21, 1987, 101 Stat. 274; Pub. L. 101–189, div. A, title XVI, § 1634, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 102–190, div. A, title III, § 345, Dec. 5, 1991, 105 Stat. 1346; Pub. L. 103–337, div. A, title X, § 1061(a), Oct. 5, 1994, 108 Stat. 2845.)

AMENDMENTS

1994—Pub. L. 103–337 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c) which related to acceptance by Secretary concerned of voluntary services, status of persons providing voluntary services, and reimbursement of expenses incurred by such persons.

1991—Subsec. (c). Pub. L. 102–190 substituted ''may be made from appropriated or nonappropriated funds'' for ''may only be made from nonappropriated funds''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''a museum, a natural resources program, or'' for ''a museum or''.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–661, as amended by Pub. L. 100–26, added subsec. (c).

1985—Subsec. (a). Pub. L. 99–145 substituted ''Secretary concerned'' and ''operated by the military department concerned or the Coast Guard, as appropriate'' for ''Secretary of a military department'' and ''operated by that military department'', respectively.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1624(b) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1985.''

ACCEPTANCE OF VOLUNTARY SERVICES PILOT PROGRAM

Section 1061(b) of Pub. L. 103–337 provided that:

''(1) The Secretary of Defense shall conduct a pilot program, for not less than six months, to accept voluntary services under the authority provided in section 1588 of title 10, United States Code, as amended by subsection (a). The purpose of the pilot program shall be to evaluate the policies and procedures of the Department of Defense for the acceptance of voluntary services under such section. The pilot program shall involve a variety of services, programs, and locations.

''(2) The Secretary may not accept voluntary services under section 1588 of title 10, United States Code (other than services that may have been accepted under such section before the date of the enactment of this Act [Oct. 5, 1994]), and may not issue regulations to implement the amendment to such section made by subsection (a), until after the termination of the pilot program.

''(3) Not later than 60 days after the termination of the pilot program, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on the results of the pilot program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8171.

§ 1589. Prohibition on payment of lodging expenses when adequate Government quarters are available

(a) Funds available to the Department of Defense (including funds in any working-capital fund) may not be used to pay the lodging expenses of a civilian employee of the Department of Defense while such employee is on official business away from his designated post of duty or, in the case of a person referred to in section 5703 of title 5, while such person is away from his home or regular place of duty, when adequate Government quarters are available but are not occupied by such employee or person.

(b) Subsection (a) does not apply during a fiscal year to an employee whose duties can be expected to require official travel during more than one-half of the number of the basic administrative work weeks during that fiscal year.

(Added Pub. L. 98–525, title XIV, § 1401(f)(1), Oct. 19, 1984, 98 Stat. 2618.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8038], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub. L. 98–212, title VII, § 745, Dec. 8, 1983, 97 Stat. 1446.

Pub. L. 97–377, title I, § 101(c) [title VII, § 749], Dec. 21, 1982, 96 Stat. 1833, 1859.

Pub. L. 97–114, title VII, § 750, Dec. 29, 1981, 95 Stat. 1587.

Pub. L. 96–527, title VII, § 752, Dec. 15, 1980, 94 Stat. 3090.

Pub. L. 96–154, title VII, § 753, Dec. 21, 1979, 93 Stat. 1161.

Pub. L. 95–457, title VIII, § 854, Oct. 13, 1978, 92 Stat. 1253.

Pub. L. 95–111, title VIII, § 853, Sept. 21, 1977, 91 Stat. 908.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1590. Management of civilian intelligence personnel of the military departments

(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(1) establish such positions, including positions in the Senior Executive Service, for civilian intelligence officers and employees of the military departments as may be necessary to carry out the intelligence functions of such departments, except that the total number of positions in the Senior Executive Service established pursuant to this section may not exceed one-half of one percent of the total number of all civilian intelligence positions established pursuant to this section;

(2) appoint individuals to such positions; and

(3) fix the compensation of such individuals for service in such positions.

(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. The Secretary shall also fix rates of pay for positions in the Senior Executive Service established pursuant to this section that are not in excess of the maximum rate or less than the minimum rate of basic pay established pursuant to section 5382 of title 5. Except in the case of a civilian intelligence officer or employee of a military department serving as a member of the Senior Executive Service of a military department, no civilian intelligence officer or employee of a military department may be paid basic pay at a rate in excess of the highest rate of basic pay payable under such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions for civilian intelligence officers or employees in or under which the military departments may employ individuals described by section 5342(a)(2)(A) of such title.

(d) In addition to the basic pay payable under subsection (b), civilian intelligence officers and employees of the military departments who are citizens or nationals of the United States and who are stationed outside the continental United States or in Alaska may be paid allowances, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on—

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

(3) both of the factors described in paragraphs (1) and (2).

(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any civilian intelligence officer or employee of a military department whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Secretary concerned or both. An action to terminate any civilian intelligence officer or employee of a military department by either such officer shall be appealable to the Secretary of Defense.

(f) With regard to any position in the Senior Executive Service which may be established pursuant to this section, the Secretary of Defense shall prescribe regulations to implement this section which are consistent with the requirements set forth in sections 3131, 3132(a)(2), 3393a, 3396(c), 3592, 3595(a), 5384, and 6304, subsections (a), (b), and (c) of section 7543 (except that any hearing or appeal to which a member of the Senior Executive Service is entitled shall be held or decided pursuant to regulations issued by the Secretary), and subchapter II of chapter 43 of title 5. The Secretary of Defense shall also prescribe, to the extent practicable, regulations to implement such other provisions of title 5 as apply to members of the Senior Executive Service or to individuals applying for positions in the Senior Executive Service.

(g) The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507 of title 5 to members of the Senior Executive Service whose positions may be established pursuant to this section. The awarding of such a rank shall be made in a manner consistent with the provisions of that section.

(Added Pub. L. 99–569, title V, § 504(a), Oct. 27, 1986, 100 Stat. 3198; amended Pub. L. 100–178, title VI, § 602(b), Dec. 2, 1987, 101 Stat. 1016; Pub. L. 101–193, title V, § 503(a), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, § 402(a), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 103–35, title II, § 201(g)(2), May 31, 1993, 107 Stat. 100.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–35 struck out second of two semicolons at end of par. (1).

1992—Subsec. (a)(1). Pub. L. 102–496, § 402(a)(1), inserted ‘‘, including positions in the Senior Executive Service,’’ after ‘‘positions’’ and inserted before semicolon at end ‘‘, except that the total number of positions in the Senior Executive Service established pursuant to this section may not exceed one-half of one percent of the total number of all civilian intelligence positions established pursuant to this section;’’.

Subsec. (b). Pub. L. 102–496, § 402(a)(2), inserted after first sentence ‘‘The Secretary shall also fix rates of pay for positions in the Senior Executive Service established pursuant to this section that are not in excess of the maximum rate or less than the minimum rate of basic pay established pursuant to section 5382 of title 5.’’

Subsecs. (f), (g). Pub. L. 102–496, § 402(a)(3), added subsecs. (f) and (g).

1989—Subsec. (e)(1). Pub. L. 101–193 struck out ‘‘, during fiscal years 1988 and 1989,’’ after ‘‘Secretary of Defense may’’.

1987—Subsec. (e)(1). Pub. L. 100–178 substituted ''fiscal years 1988 and 1989'' for ''fiscal year 1987''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

REPORT TO CONGRESS

Section 504(c) of Pub. L. 99–569 provided that: ''The Secretary of Defense shall conduct a comprehensive review and evaluation of the implementation of section 1590 of title 10, United States Code and shall report thereon to the Congress no later than March 1, 1989. Such report shall—

''(1) describe the extent to which the civilian intelligence personnel management systems established under section 1590 of title 10 have improved acquisition and retention of civilian intelligence personnel by the military departments;

''(2) describe the elements of uniformity among the civilian intelligence personnel management systems established under section 1590 of title 10;

''(3) describe the elements of diversity among the civilian intelligence personnel management systems established under section 1590 of title 10, and explain the need for such diversity based on differences in the intelligence needs or missions of the military departments;

''(4) describe the means for oversight within the Office of the Secretary of Defense and each of the military departments for ensuring consistent application of regulations, directives, and guidelines which implement the authority granted under section 1590 of title 10;

''(5) contain recommendations for any legislative changes the Secretary of Defense may deem appropriate; and

''(6) include such other matters as the Secretary of Defense may deem appropriate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 7511.

§ 1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress

(a) Subject to subsection (b), the Secretary concerned may authorize reimbursement to a civilian employee who is accompanying a Member of Congress or a congressional employee on official travel for actual travel and transportation expenses incurred for such travel.

(b) The allowance provided in subsection (a) may be paid—

(1) at a rate that does not exceed the rate approved for official congressional travel; and

(2) only when the travel of the member is directed or approved by the Secretary concerned.

(c) In this section:

(1) The term ''Member of Congress'' means a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(2) The term ''congressional employee'' means an employee of a Member of Congress or an employee of Congress.

(3) The term ''Secretary concerned'' includes the Secretary of Defense with respect to civilian employees of the Department of Defense other than a military department.

(Added Pub. L. 100–180, div. A, title VI, § 617(b)(1), Dec. 4, 1987, 101 Stat. 1097.)

EFFECTIVE DATE

Section 617(c) of Pub. L. 100–180 provided that: ''Subsection (h) of section 404 of title 37, United States Code (as added by subsection (a)), and section 1591 of title 10, United States Code (as added by subsection (b)), shall apply with respect to travel performed after the date of the enactment of this Act [Dec. 4, 1987].''

§ 1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures

Funds available to the Department of Defense (including funds in the Foreign National Employees Separation Pay Account, Defense, established under section 1581 of this title) may not be used to pay severance pay to a foreign national employed by the Department of Defense under a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(Added Pub. L. 101–189, div. A, title III, § 311(b)(1), Nov. 29, 1989, 103 Stat. 1411; amended Pub. L. 102–190, div. A, title X, § 1003(b), Dec. 5, 1991, 105 Stat. 1456; Pub. L. 102–484, div. A, title X, § 1052(21), Oct. 23, 1992, 106 Stat. 2500.)

CODIFICATION

Another section 1592 was renumbered section 1596 of this title.

AMENDMENTS

1992—Pub. L. 102–484 inserted ''section'' after ''established under''.

1991—Pub. L. 102–190 inserted ''(including funds in the Foreign National Employees Separation Pay Account, Defense, established under 1581 of this title)'' and substituted ''a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay'' for ''a contract performed in a foreign country''.

EFFECTIVE DATE

Section 311(b)(3) of Pub. L. 101–189, as amended by Pub. L. 102–484, div. A, title XIII, § 1352(a), Oct. 23, 1992, 106 Stat. 2558, provided that:

''(A) Section 1592 of title 10, United States Code, as added by paragraph (1), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].

''[(B) Repealed. Pub. L. 102–484, div. A, title XIII, § 1352(a), Oct. 23, 1992, 106 Stat. 2558.]''

PROHIBITION ON PAYMENT OF SEVERANCE PAY TO CERTAIN FOREIGN NATIONALS IN THE PHILIPPINES

Section 1351 of Pub. L. 102–484 provided that:

''(a) PROHIBITION.—Funds available to the Department of Defense may not be used to pay severance pay to a foreign national employed by the Department of Defense in the Republic of the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines.

''(b) PROHIBITION ON ALLOWANCE OF CERTAIN SEVERANCE PAY AS CONTRACT COSTS.—Funds available to the

Department of Defense may not be used to pay the costs of severance pay paid by a contractor to a foreign national employed by the contractor under a defense service contract in the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Philippines.''

§1593. Uniform allowance: civilian employees

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary of Defense may pay an allowance to each civilian employee of the Department of Defense who is required by law or regulation to wear a prescribed uniform in the performance of official duties.

(2) In lieu of providing an allowance under paragraph (1), the Secretary may provide a uniform to a civilian employee referred to in such paragraph.

(3) This subsection shall not apply with respect to a civilian employee of the Defense Intelligence Agency who is entitled to an allowance under section 1606 of this title.

(b) AMOUNT OF ALLOWANCE.—Notwithstanding section 5901(a) of title 5, the amount of an allowance paid, and the cost of uniforms provided, under subsection (a) to a civilian employee may not exceed $400 per year.

(c) TREATMENT OF ALLOWANCE.—An allowance paid, or uniform provided, under subsection (a) shall be treated in the same manner as is provided in section 5901(c) of title 5 for an allowance paid under that section.

(d) USE OF APPROPRIATED FUNDS FOR ALLOWANCE.—Amounts appropriated annually to the Department of Defense for the pay of civilian employees may be used for uniforms, or for allowance for uniforms, as authorized by this section and section 5901 of title 5.

(Added Pub. L. 101–189, div. A, title III, §336(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XIV, §1481(d)(3), Nov. 5, 1990, 104 Stat. 1706.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (d) of this section were contained in Pub. L. 101–165, title IX, §9010, Nov. 21, 1989, 103 Stat. 1131, which was set out as a note below, prior to repeal by Pub. L. 101–510, div. A, title XIV, §1481(d)(4)(B), Nov. 5, 1990, 104 Stat. 1706.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

EFFECTIVE DATE

Section 336(c) of Pub. L. 101–189 provided that: ''The amendments made by this section [enacting this section and amending section 1606 of this title] shall take effect on January 1, 1990.''

AVAILABILITY OF FUNDS FOR PAY OF CIVILIAN EMPLOYEES FOR UNIFORMS

Pub. L. 101–165, title IX, §9010, Nov. 21, 1989, 103 Stat. 1131, which made appropriations available to Department of Defense for pay of civilian employees for uniforms, or allowances therefor, as authorized by section 5901 of title 5, was repealed and restated in subsec. (d) of this section by Pub. L. 101–510, §1481(d)(3), (4)(B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1606 of this title.

§1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay

(a)(1) A civilian officer or employee of the Department of Defense who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the officer or employee concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay of the officer or employee concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' has the meaning given the term ''financial organization'' in section 3332(a) of title 31.

(2) The term ''pay'' includes allowances.

(Added Pub. L. 101–189, div. A, title VI, §664(b)(1), Nov. 29, 1989, 103 Stat. 1466; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(6), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–25, title VII, §701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1990—Subsec. (d). Pub. L. 101–510 substituted ''In this section'' for ''in this section''.

EFFECTIVE DATE

Section applicable with respect to pay and allowances deposited (or scheduled to be deposited) on or after first day of first month beginning after Nov. 29, 1989, see section 664(c) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1053 of this title.

§1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.

(2) The Foreign Language Center of the Defense Language Institute.

(3) The George C. Marshall European Center for Security Studies.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—(1) In the case of the National Defense

University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

(2) For purposes of this section, the National Defense University includes the National War College, the Armed Forces Staff College, the Institute for National Strategic Study, and the Industrial College of the Armed Forces.

(e) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT GEORGE C. MARSHALL CENTER.—In the case of the George C. Marshall European Center for Security Studies, this section also applies with respect to the Director and the Deputy Director.

(Added Pub. L. 101–189, div. A, title XI, § 1124(a)(1), Nov. 29, 1989, 103 Stat. 1558; amended Pub. L. 102–25, title VII, § 701(h)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title IX, § 911, Dec. 5, 1991, 105 Stat. 1452; Pub. L. 102–484, div. A, title IX, § 923(a)(1), (2)(A), Oct. 23, 1992, 106 Stat. 2474; Pub. L. 103–160, div. A, title IX, § 923(a)(1), Nov. 30, 1993, 107 Stat. 1731.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University: Foreign Language Center of the Defense Language Institute: civilian faculty members'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (d) relating to similar subject matter but not including coverage of the George C. Marshall European Center for Security Studies.

1992—Pub. L. 102–484, § 923(a)(2)(A), substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in section catchline.

Subsec. (a). Pub. L. 102–484, § 923(a)(1)(A), inserted ''and the Foreign Language Center of the Defense Language Institute'' after ''National Defense University''.

Subsec. (c). Pub. L. 102–484, § 923(a)(1)(B), substituted ''In the case of the National Defense University, this section'' for ''This section''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''after February 27, 1990'' for ''after the end of the 90-day period beginning on the date of the enactment of this section''.

Subsec. (d). Pub. L. 102–190 inserted ''the Institute for National Strategic Study,'' after ''Staff College,''.

EFFECT OF 1992 AMENDMENTS ON CURRENT EMPLOYEES

Section 923(b) of Pub. L. 102–484 provided that: ''In the case of a person who, on the day before the date of the enactment of this Act [Oct. 23, 1992], is employed as a professor, instructor, or lecturer at the Foreign Language Center of the Defense Language Institute, the Secretary of Defense shall afford the person an opportunity to elect to be paid under the compensation plan authorized by section 1595(b) of title 10, United States Code, or to continue to be paid under the General Schedule (with no reduction in pay) under section 5332 of title 5, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 1596. Foreign language proficiency: special pay

(a) The Secretary of Defense may pay special pay under this section to a civilian officer or employee of the Department of Defense who—

(1) has been certified as being proficient in a foreign language identified by the Secretary of Defense as being a language in which proficiency by civilian personnel of the Department is important for the effective collection, production, or dissemination of foreign intelligence information; and

(2) is serving in a position, or is subject to assignment to a position, in which proficiency in that language facilitates performance of officially assigned intelligence or intelligence-related duties.

(b) The annual rate of special pay under subsection (a) shall be determined by the Secretary of Defense.

(c) Special pay under this section may be paid in addition to any compensation authorized under section 1604(b) of this title for which an officer or employee is eligible.

(Added Pub. L. 101–193, title V, § 501(a)(1), Nov. 30, 1989, 103 Stat. 1707, § 1592; renumbered § 1596, Pub. L. 101–510, div. A, title XIV, § 1484(a), Nov. 5, 1990, 104 Stat. 1715.)

AMENDMENTS

1990—Pub. L. 101–510 renumbered the second section 1592 of this title as this section.

EFFECTIVE DATE

Section 501(b) of Pub. L. 101–193 provided that: ''Section 1592 [now 1596] of title 10, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning on or after the later of—

''(1) October 1, 1989, or

''(2) the date of the enactment of this Act [Nov. 30, 1989].''

§ 1597. Civilian positions: guidelines for reductions

(a) REQUIREMENT OF GUIDELINES FOR REDUCTIONS IN CIVILIAN POSITIONS.—Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).

(b) GUIDELINES.—The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

(1) Positions filled by foreign national employees overseas.

(2) All other positions filled by civilian employees overseas.

(3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.

(4) Direct operating or production positions in the United States.

(c) MASTER PLAN.—(1) The Secretary of Defense shall include in the materials submitted to Congress in support of the budget request for the Department of Defense for each fiscal year a civilian positions master plan described in paragraph (2) for the Department of Defense as a whole and for each military department, Defense Agency, and other principal component of the Department of Defense.

(2) The master plan referred to in paragraph (1) shall include the information described in

paragraph (3). Such information shall include information for each of the two fiscal years immediately preceding such fiscal year and projected information for such fiscal year and each of the two fiscal years immediately following such fiscal year.

(3) The information referred to in paragraph (2) is the following:

(A) A profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, Defense Agency, and other principal component of the Department of Defense. The profile shall include information on the following:

(i) The total number of civilian employees.

(ii) Of the total number of civilian employees, the number of civilian employees in the United States, the number of civilian employees overseas, and the number of foreign national employees overseas.

(iii) Of the total number of civilian employees at the end of each fiscal year covered by the master plan, the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(iv) Accessions and losses of civilian positions, shown in the aggregate and by the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(v) The number of losses of civilian positions, by appropriation account, due to reductions in force, furloughs, or functional transfers or other significant transfers of work away from the military department, Defense Agency, or other component.

(vi) The extent to which accessions and losses of civilian positions are due to functional transfers or competitive actions that are related to the Department of Defense management review initiatives of the Secretary of Defense.

(vii) The total number of individuals employed by contractors and subcontractors of the Department of Defense under a contract or subcontract entered into pursuant to Office of Management and Budget Circular A–76 to perform commercial activities for the Department of Defense, a military department, a defense agency, or other component.

(B) For industrial-type and commercial-type activities funded through the Defense Business Operations Fund, the following information:

(i) Annual trends in the amount of funded workload for each activity, based upon the average number of months of accumulated, funded workload to be performed, or projected to be performed, by the activity.

(ii) The extent to which such workload is funded by funds that are appropriated from appropriation accounts and managed through the Defense Business Operations Fund.

(C) Information that indicates trends in the extent to which the military department, Defense Agency, or other component enters into contracts with persons outside of the Department of Defense, rather than uses civilian positions, to perform work for the military department, Defense Agency, or other component.

(D) Information that indicates the extent to which the Department of Defense management review initiatives of the Secretary of Defense and other productivity enhancement programs of the Department of Defense significantly affect the number of losses of civilian positions, particularly administrative and management positions.

(4) The Secretary of Defense shall include in the materials referred to in paragraph (1) a report on the implementation of the master plan for the fiscal year immediately preceding the fiscal year for which such materials are submitted.

(d) EXCEPTIONS.—The Secretary of Defense may permit a variation from the guidelines established under subsection (b) or a master plan prepared under subsection (c) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.

(e) INVOLUNTARY REDUCTIONS OF CIVILIAN POSITIONS.—The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

(Added Pub. L. 101–510, div. A, title III, §322(a)(1), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 102–484, div. A, title III, §371(a), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 103–35, title II, §201(d)(1), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title III, §363, Nov. 30, 1993, 107 Stat. 1628.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, §363(a)(1), substituted ''during a fiscal year'' for ''during fiscal year 1993''.

Subsec. (b). Pub. L. 103–160, §363(a)(2), struck out ''for fiscal year 1993'' after ''establish guidelines'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–160, §363(b)(1), substituted ''for each fiscal year'' for ''for fiscal year 1994''.

Subsec. (c)(3)(A)(v). Pub. L. 103–35, §201(d)(1)(A)(i), substituted ''Defense Agency'' for ''defense agency''.

Subsec. (c)(3)(A)(vii). Pub. L. 103–160, §363(b)(2), added cl. (vii).

Subsec. (c)(3)(C). Pub. L. 103–35, §201(d)(1)(A)(ii), substituted ''Defense Agency'' for ''defense agency'' after ''to which the military department,'' and ''Defense Agency,'' for ''defense agency'' after ''for the military department,''.

Subsec. (c)(4). Pub. L. 103–160, §363(b)(3), added par. (4).

Subsec. (e). Pub. L. 103–35, §201(d)(1)(B), substituted ''on the date'' for ''of the date''.

1992—Pub. L. 102–484 substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

NON-FEDERAL EMPLOYMENT INCENTIVE PILOT PROGRAM

Pub. L. 103–337, div. A, title III, § 348, Oct. 5, 1994, 108 Stat. 2725, provided that:

''(a) AUTHORITY.—The Secretary of Defense may establish a pilot program for the payment of incentives in accordance with this section to facilitate the reemployment of eligible employees of the Department of Defense whose employment with the Department is being terminated by reason of the closure or realignment of the military installations where such persons are employed. Under the pilot program, the Secretary may pay retraining and relocation incentives to encourage non-Federal employers to hire and retain such employees.

''(b) ELIGIBLE EMPLOYEES.—For purposes of this section, an eligible employee is an employee of the Department of Defense, serving under an appointment without time limitation, who has been employed by the Department of Defense for a continuous period of at least 12 months and who has been given notice of separation pursuant to a reduction in force, except that such term does not include—

''(1) a reemployed annuitant under subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title, or another retirement system for employees of the Government;

''(2) an employee who, upon separation from Federal service, is eligible for an immediate annuity under subchapter III of chapter 83 of title 5, United States Code, or subchapter II of chapter 84 of such title; or

''(3) an employee who is eligible for disability retirement under any of the retirement systems referred to in paragraph (1).

''(c) RETRAINING INCENTIVE.—(1) Under the pilot program, the Secretary may enter into an agreement with a non-Federal employer under which the non-Federal employer agrees—

''(A) to employ a person referred to in subsection (a) for at least 12 months for a salary which is mutually agreeable to the employer and such person; and

''(B) to certify to the Secretary the cost incurred by the employer for any necessary training provided to such person in connection with the employment by that employer.

''(2) The Secretary shall pay a retraining incentive to the non-Federal employer upon the employee's completion of 12 months of continuous employment by that employer. Subject to subsection (f), the Secretary shall prescribe the amount of the incentive.

''(3) The Secretary shall pay a prorated amount of the full retraining incentive to the non-Federal employer for an employee who does not remain employed by the non-Federal employer for at least 12 months.

''(4) In no event may the amount of the retraining incentive paid for the training of any one person under the pilot program exceed the amount certified for that person under paragraph (1).

''(d) RELOCATION INCENTIVE.—The Secretary may pay a relocation incentive to an eligible employee if it is necessary for the employee to relocate in order to commence employment with a non-Federal employer under the pilot program. Subject to subsection (f), the amount of the incentive shall be equal to the total amount authorized to be paid for travel, transportation, and subsistence expenses under subchapter II of chapter 57 of title 5, United States Code, including the reimbursements authorized under section 5724b of such title, to a Federal employee being transferred between the same locations as the person paid the incentive.

''(e) APPROVAL OF SECRETARY OF DEFENSE.—The Secretary of a military department or the head of a Defense Agency may offer an incentive under the pilot program with the prior approval of the Secretary of Defense or pursuant to a delegation of authority by the Secretary of Defense.

''(f) LIMITATION.—The total amount of incentives paid in the case of a person under the pilot program may not exceed $10,000.

''(g) DURATION.—No incentive may be paid under the pilot program for training or relocations commenced after September 30, 1999.

''(h) DEFINITIONS.—In this section:

''(1) The term 'non-Federal employer' means an employer that is not an Executive agency, as defined in section 105 of title 5, United States Code, or the legislative or judicial branch of the Federal Government.

''(2) The term 'Defense Agency' has the meaning given such term in section 101(a)(11) of title 10, United States Code.''

SKILL TRAINING PROGRAMS IN DEPARTMENT OF DEFENSE

Section 4435 of Pub. L. 102–484 provided that:

''(a) AUTHORITY.—(1) Under regulations prescribed by the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Defense with respect to employees of the Department of Defense other than employees of the military departments, may provide not more than one year of training in training facilities of the Department to civilian employees of the Department of Defense who are separated from employment as a result of a reduction in force or a closure or realignment of a military installation.

''(2) Training may be provided under this subsection during the period beginning on October 1, 1992, and ending on September 30, 1995.

''(b) REGISTER OF TRAINING PROGRAMS.—Not later than February 1, 1993, the Secretary of Defense, in consultation with the Secretary of Labor and the Director of the Office of Personnel Management, shall publish a register of the skill training programs carried out by the Department of Defense. The register shall—

''(1) include a list of the skill training programs;

''(2) provide information on the location of such programs, the training provided under such programs, and the number of persons who may receive training under such programs; and

''(3) identify the programs that provide training in skills that are useful to employees in the civilian work force.''

INVOLUNTARY REDUCTIONS OF CIVILIAN PERSONNEL IN FISCAL YEAR 1991

Section 322(b) of Pub. L. 101–510 provided that: ''After the date of the enactment of this Act [Nov. 5, 1990], an agency or component of the Department of Defense may not implement any involuntary reductions or furloughs of civilian personnel in industrial-type or commercial-type activities in fiscal year 1991 until 45 days after the date on which the agency or component submits a report to Congress outlining the reasons why such reductions or furloughs are required and including a description of any changes in workload and manpower requirements that will result from those reductions or furloughs.''

§ 1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides

(a) PLACEMENT PROGRAM.—The Secretary of Defense may establish a program—

(1) to assist eligible civilian employees of the Department of Defense and the Department of Energy after the termination of their employment to obtain—

(A) certification or licensure as elementary or secondary school teachers; or

(B) the credentials necessary to serve as teachers' aides; and

(2) to facilitate the employment of such employees by local educational agencies that—

(A) are receiving grants under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701[1] et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; and

(B) are also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE EMPLOYEES.—(1) A civilian employee of the Department of Defense or the Department of Energy shall be eligible for selection by the Secretary of Defense to participate in the placement program authorized by subsection (a) if the employee—

(A) during the five-year period beginning October 1, 1992, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense or the Secretary of Energy, as the case may be;

(B) has received—

(i) in the case of an employee applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(ii) in the case of an employee applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(2) The Secretary of Defense may accept an application from a civilian employee referred to in paragraph (1) who was terminated during the period beginning on October 1, 1990, and ending on October 1, 1992, if the employee otherwise satisfies the eligibility criteria specified in that paragraph.

(c) SELECTION OF PARTICIPANTS.—(1) Selection of civilian employees to participate in the placement program shall be made on the basis of applications submitted to the Secretary of Defense after the employees receive a notice of termination. An application shall be filed within such time, in such form, and contain such information as the Secretary of Defense may require.

(2) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary of Defense shall give priority to civilian employees who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(3) The Secretary of Defense may not select a civilian employee to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under the program with respect to that member.

(d) AGREEMENT.—A civilian employee selected to participate in the placement program shall be required to enter into an agreement with the Secretary of Defense in which the employee agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an employee selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than five school years with a local educational agency identified under section 1151(b)(2) of this title, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an employee selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than five school years with a local educational agency identified under section 1151(b)(3) of this title, to begin the school year after obtaining the necessary credentials.

(e) STIPEND FOR PARTICIPANTS.—(1) Except as provided in paragraph (2), the Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A civilian employee selected to participate in the placement program who receives separation pay under section 5597 of title 5 shall not be paid a stipend under paragraph (1).

(3) A stipend paid under paragraph (1) shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(f) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151 of this title shall apply with respect to the placement program authorized by this section.

(Added Pub. L. 102–484, div. D, title XLIV, §4442(a), Oct. 23, 1992, 106 Stat. 2730; amended Pub. L. 103–35, title II, §201(h)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII,

[1] So in original. Probably should be "6301".

§ 1331(c)(2), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, § 391(b)(3), Oct. 20, 1994, 108 Stat. 4021.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Higher Education Act of 1965, referred to in subsec. (e)(3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20, and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grants under''.

1993—Subsec. (d)(2)(A), (B). Pub. L. 103–160 substituted ''five school years'' for ''two school years''.

Subsec. (e)(4). Pub. L. 103–35 struck out par. (4) which read as follows: ''A person who receives a stipend under section 4436 of this title shall not be paid a stipend pursuant to paragraph (1).''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–160 not applicable with respect to persons selected by Secretary of Defense before Nov. 30, 1993, to participate in teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of this title or agreements entered into by Secretary before such date with local educational agencies under such sections, see section 1331(h) of Pub. L. 103–160, set out as a note under section 1151 of this title.

§ 1599. Postemployment assistance: certain terminated intelligence employees

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may, in the case of any individual who is a qualified former intelligence employee, use appropriated funds—

(1) to assist that individual in finding and qualifying for employment other than in an intelligence component of the Department of Defense;

(2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and

(3) to provide financial support to that individual during periods of unemployment.

(b) QUALIFIED FORMER INTELLIGENCE EMPLOYEES.—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive position in an intelligence component of the Department of Defense—

(1) who has been found to be ineligible for continued access to information designated as ''Sensitive Compartmented Information'' and employment with the intelligence component; or

(2) whose employment with the intelligence component has been terminated.

(c) CONDITIONS.—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

(1) maintain the judgment and emotional stability of the qualified former intelligence employee; and

(2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) DURATION OF ASSISTANCE.—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual with an intelligence component of the Department of Defense.

(e) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report with respect to any expenditure made under this section.

(2) The committees referred to in paragraph (1) are the following:

(A) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(f) DEFINITION.—In this section, the term ''intelligence component of the Department of Defense'' means any of the following:

(1) The National Security Agency.

(2) The Defense Intelligence Agency.

(3) The National Reconnaissance Office.

(4) The Central Imagery Office.

(5) The intelligence components of any of the military departments.

(Added Pub. L. 103–359, title VIII, § 806(a)(1), Oct. 14, 1994, 108 Stat. 3441.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1604(e)(4) of this title and in section 17 of Pub. L. 86–36 as added by Pub. L. 102–88, title V, § 503, Aug. 14, 1991, 105 Stat. 436, set out as a note under section 402 of Title 50, War and National Defense, prior to repeal by Pub. L. 103–359, § 806(b).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CHAPTER 83—DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL

Sec.
1601. Defense Intelligence Senior Executive Service.
1602. Defense Intelligence Agency merit pay system.
1603. Limit on pay.
1604. Civilian personnel management.
1605. Benefits for certain employees of the Defense Intelligence Agency.
1606. Uniform allowance: civilian employees.

Sec.
[1607. Renumbered.]
1608. Financial assistance to certain employees in acquisition of critical skills.

AMENDMENTS

1994—Pub. L. 103–359, title V, §501(b)(1)(A), Oct. 14, 1994, 108 Stat. 3428, amended chapter heading generally, inserting ''AND CENTRAL IMAGERY OFFICE''.

1989—Pub. L. 101–193, title V, §507(a)(2), Nov. 30, 1989, 103 Stat. 1710, added item 1608.

1987—Pub. L. 100–178, title VI, §601(b), Dec. 2, 1987, 101 Stat. 1015, added item 1606.

1985—Pub. L. 99–145, title XIII, §1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 of chapter 8 of this title as item 1605 and transferred it to this chapter.

1984—Pub. L. 98–618, title V, §501(b), Nov. 8, 1984, 98 Stat. 3302, added item 1604.

§1601. Defense Intelligence Senior Executive Service

(a) The Secretary of Defense may by regulation establish a personnel system for senior civilian personnel within the Defense Intelligence Agency and the Central Imagery Office to be known as the Defense Intelligence Senior Executive Service. The regulations establishing the Defense Intelligence Senior Executive Service shall—

(1) meet the requirements set forth in section 3131 of title 5 for the Senior Executive Service;

(2) provide that positions in the Defense Intelligence Senior Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2) of title 5;

(3) provide rates of pay for the Defense Intelligence Senior Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 of title 5, and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(4) provide a performance appraisal system for the Defense Intelligence Senior Executive Service that conforms to the provisions of subchapter II of chapter 43 of title 5;

(5) provide for removal consistent with section 3592 of such title, and removal or suspension consistent with subsections (a), (b), and (c) of section 7543 of title 5 (except that any hearing or appeal to which a member of the Defense Intelligence Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Secretary of Defense);

(6) permit the payment of performance awards to members of the Defense Intelligence Senior Executive Service consistent with the provisions applicable to performance awards under section 5384 of title 5;

(7) provide that members of the Defense Intelligence Senior Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c) of title 5; and

(8) provide for the recertification of members of the Defense Intelligence Senior Executive Service consistent with the provisions of section 3393a of title 5.

(b) Except as otherwise provided in subsection (a), the Secretary of Defense may—

(1) make applicable to the Defense Intelligence Senior Executive Service any of the provisions of title 5 applicable to applicants for or members of the Senior Executive Service; and

(2) appoint, promote, and assign individuals to positions established within the Defense Intelligence Senior Executive Service without regard to the provisions of title 5 governing appointments and other personnel actions in the competitive service.

(c) The President, based on the recommendations of the Secretary of Defense, may award ranks to members of the Defense Intelligence Senior Executive Service in a manner consistent with the provisions of section 4507 of title 5.

(d) Notwithstanding any other provision of this section, the Secretary of Defense may detail or assign any member of the Defense Intelligence Senior Executive Service to serve in a position outside the Defense Intelligence Agency or the Central Imagery Office in which the member's expertise and experience may be of benefit to the Defense Intelligence Agency, the Central Imagery Office, or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the Defense Intelligence Senior Executive Service.

(e) The Secretary of Defense shall each year submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at the time the Budget is submitted by the President to the Congress for the next fiscal year, a report on the executive personnel in the Defense Intelligence Agency and the Central Imagery Office. The report shall include—

(1) the total number of positions added to or deleted from the Defense Intelligence Senior Executive Service during the preceding fiscal year;

(2) the number of executive personnel (including all members of the Defense Intelligence Senior Executive Service) being paid at each grade level and pay rate in effect at the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the Defense Intelligence Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the Defense Intelligence Senior Executive Service during the preceding fiscal year for less than fully successful performance.

(Added Pub. L. 97–89, title VII, §701(a)(1), Dec. 4, 1981, 95 Stat. 1159; amended Pub. L. 101–194, title V, §506(c)(3), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101–280, §6(d)(4), May 4, 1990, 104 Stat. 161; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(5), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–359, title V, §501(b)(1)(B), Oct. 14, 1994, 108 Stat. 3428.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–359, §501(b)(1)(B)(i), inserted ''and the Central Imagery Office'' after ''Defense Intelligence Agency'' in introductory provisions.

Subsec. (d). Pub. L. 103–359, §501(b)(1)(B)(ii), inserted ''or the Central Imagery Office'' after ''outside the Defense Intelligence Agency'' and '', the Central Imagery Office,'' after ''to the Defense Intelligence Agency''.

Subsec. (e). Pub. L. 103–359, § 501(b)(1)(B)(iii), inserted ''and the Central Imagery Office'' after ''Defense Intelligence Agency'' in introductory provisions.

1990—Subsec. (a)(7). Pub. L. 101–280 and Pub. L. 101–510 made substantially identical technical correction to directory language of Pub. L. 101–194, § 506(c)(3), see 1989 Amendment note below.

1989—Subsec. (a). Pub. L. 101–194, as amended by Pub. L. 101–280 and Pub. L. 101–510, added par. (8).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 806 of Pub. L. 97–89 provided that: ''The amendments made by titles V, VI, and VII and by this title [enacting this chapter and section 403m of Title 50, War and National Defense, amending sections 2108, 6304, and 8336 of Title 5, Government Organization and Employees, and sections 403e, 403f, and 405 of Title 50, enacting provisions set out as notes under this section and section 402 of Title 50, and amending provisions set out as notes under section 402 of Title 50] shall take effect as of October 1, 1981.''

DELEGATION OF AUTHORITY

Section 701(b) of Pub. L. 97–89 provided that: ''The authority of the Secretary of Defense under chapter 83 of title 10, United States Code, as added by subsection (a), may be delegated in accordance with section 133(d) of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1602. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency and Central Imagery Office as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401[1] of title 5, as in effect on October 31, 1993.

(Added Pub. L. 97–89, title VII, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended Pub. L. 98–615, title II, § 204(b), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103–89, § 3(b)(3)(A), Sept. 30, 1993, 107 Stat. 982; Pub. L. 103–359, title V, § 501(b)(1)(C), Oct. 14, 1994, 108 Stat. 3428.)

REFERENCES IN TEXT

Section 5401 of title 5, referred to in text, was repealed by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, eff. Nov. 1, 1993.

AMENDMENTS

1994—Pub. L. 103–359 inserted ''and Central Imagery Office'' after ''Defense Intelligence Agency''.

1993—Pub. L. 103–89 inserted '', as in effect on October 31, 1993''.

1984—Pub. L. 98–615 substituted ''section 5401 of title 5'' for ''section 5401(a) of title 5''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

[1] See References in Text note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 205 of Pub. L. 98–615 provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1603. Limit on pay

Nothing in sections 1601 and 1602 of this title shall be construed to allow the aggregate amount payable to a member of the Defense Intelligence Senior Executive Service under those sections during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year.

(Added Pub. L. 97–89, title VII, § 701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended Pub. L. 99–145, title XIII, § 1302(a)(3), Nov. 8, 1985, 99 Stat. 738; Pub. L. 99–661, div. A, title XIII, § 1343(a)(9), Nov. 14, 1986, 100 Stat. 3992.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in text, is set out in section 5312 of Title 5, Government Organization and Employees.

AMENDMENTS

1986—Pub. L. 99–661 struck out ''this'' after ''Nothing in'' and substituted ''those sections'' for ''this sections 1601 and 1602 of this title''.

1985—Pub. L. 99–145 substituted ''sections 1601 and 1602 of this title'' for ''chapter'' in two places.

§ 1604. Civilian personnel management

(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(1) establish such positions for civilian officers and employees in the Defense Intelligence Agency and the Central Imagery Office, as may be necessary to carry out the functions of such Agency;

(2) appoint individuals to such positions; and

(3) fix the compensation of such individuals for service in such positions.

(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except in the case of an officer or employee of the Defense Intelligence Agency or the Central Imagery Office serving as a member of the Defense Intelligence Senior Executive Service, no officer or employee of the Defense Intelligence Agency or the Central Imagery Office may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions in or under which

the Defense Intelligence Agency or the Central Imagery Office may employ individuals described by section 5342(a)(2)(A) of such title.

(d) In addition to the basic compensation payable under subsection (b), officers and employees of the Defense Intelligence Agency and the Central Imagery Office who are citizens or nationals of the United States and who are stationed outside the continental United States or in Alaska may be paid compensation, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on—

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

(3) both of the factors described in paragraphs (1) and (2).

(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any civilian officer or employee of the Defense Intelligence Agency or the Central Imagery Office whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense, the Director of the Defense Intelligence Agency, the Director of the Central Imagery Office, or all three. An action to terminate any civilian officer or employee by any such officer shall be appealable to the Secretary of Defense.

(Added Pub. L. 98–618, title V, §501(a), Nov. 8, 1984, 98 Stat. 3301; amended Pub. L. 99–569, title V, §502, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 100–178, title VI, §602(a), Dec. 2, 1987, 101 Stat. 1015; Pub. L. 101–193, title V, §503(b), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, §401(a), Oct. 24, 1992, 106 Stat. 3183; Pub. L. 103–359, title V, §501(b)(1)(D), title VIII, §806(b)(1), Oct. 14, 1994, 108 Stat. 3428, 3442.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–359, §501(b)(1)(D)(i), inserted ''and the Central Imagery Office'' after ''Defense Intelligence Agency''.

Subsec. (b). Pub. L. 103–359, §501(b)(1)(D)(ii), inserted ''or the Central Imagery Office'' after ''Defense Intelligence Agency'' in two places.

Subsec. (c). Pub. L. 103–359, §501(b)(1)(D)(iii), inserted ''or the Central Imagery Office'' after ''Defense Intelligence Agency''.

Subsec. (d). Pub. L. 103–359, §501(b)(1)(D)(iv), inserted ''and the Central Imagery Office'' after ''Defense Intelligence Agency'' in introductory provisions.

Subsec. (e)(1). Pub. L. 103–359, §501(b)(1)(D)(v), inserted ''or the Central Imagery Office'' after ''Defense Intelligence Agency''.

Subsec. (e)(3). Pub. L. 103–359, §501(b)(1)(D)(vi), amended first sentence generally and substituted ''any such officer'' for ''either such officer'' in second sentence. Prior to amendment, first sentence read as follows: ''The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Director of the Defense Intelligence Agency or both.''

Subsec. (e)(4). Pub. L. 103–359, §806(b)(1), struck out par. (4) which related to postemployment assistance for certain terminated Defense Intelligence Agency Employees where Secretary determined such assistance essential to maintain judgment and emotional stability of such employee and avoid circumstances that might lead to unlawful disclosure of classified information to which employee had access. See section 1599 of this title.

1992—Subsec. (e)(4). Pub. L. 102–496 added par. (4).

1989—Subsec. (e)(1). Pub. L. 101–193 struck out '', during fiscal years 1988 and 1989,'' after ''Secretary of Defense may''.

1987—Subsec. (e)(1). Pub. L. 100–178 substituted ''1988 and 1989'' for ''1986 and 1987''.

1986—Subsec. (e)(1). Pub. L. 99–569 substituted ''1986 and 1987'' for ''1985 and 1986''.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

FIRST ANNUAL REPORT

Section 401(b) of Pub. L. 102–496 directed that the first report under 10 U.S.C. 1604(e)(4) be submitted not later than 12 months after Oct. 24, 1992.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1596 of this title.

§1605. Benefits for certain employees of the Defense Intelligence Agency

(a) The Secretary of Defense may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (5), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5. The Secretary may also provide to any such civilian personnel special retirement accrual benefits in the same manner provided for certain officers and employees of

the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations issued pursuant to subsection (a) shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.

(Added Pub. L. 98–215, title V, § 501(a), Dec. 9, 1983, 97 Stat. 1478, § 192; renumbered § 1605 and amended Pub. L. 99–145, title XIII, § 1302(a)(1), Nov. 8, 1985, 99 Stat. 737; Pub. L. 99–335, title V, § 507(b), June 6, 1986, 100 Stat. 628; Pub. L. 99–569, title V, § 501, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 101–193, title V, § 505(a), Nov. 30, 1989, 103 Stat. 1709; Pub. L. 102–496, title VIII, § 803(d), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103–160, div. A, title XI, § 1182(a)(3), Nov. 30, 1993, 107 Stat. 1771.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''(50 U.S.C. 2153)'' for ''(50 U.S.C. 403 note)''.

1992—Subsec. (a). Pub. L. 102–496 substituted ''the Central Intelligence Agency Retirement Act'' for ''the Central Intelligence Agency Retirement Act of 1964 for Certain Employees'' and inserted ''(50 U.S.C. 403r)'' after ''the Central Intelligence Agency Act of 1949''.

1989—Subsec. (a). Pub. L. 101–193 struck out ''who are subject to chapter 84 of title 5,'' after ''such civilian personnel'' in last sentence and inserted reference to section 18 of the Central Intelligence Agency Act of 1949.

1986—Subsec. (a). Pub. L. 99–569 inserted reference to par. (5) of section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081(5)).

Pub. L. 99–335 inserted provision authorizing the Secretary to provide to any civilian personnel subject to chapter 84 of title 5 special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

1985—Subsec. (a). Pub. L. 99–145, § 1302(a)(1)(A), (B), struck out references to Director of the Defense Intelligence Agency and to military personnel, substituted ''sections 705 and 903'' for ''under sections 903, 705, and 2308'', and substituted ''(22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.'' for ''(22 U.S.C. 4025; 22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).''

Subsec. (b). Pub. L. 99–145, § 1302(a)(1)(A), struck out reference to Director of the Defense Intelligence Agency.

Subsecs. (c), (d). Pub. L. 99–145, § 1302(a)(1)(C), struck out subsec. (c) which read as follows: ''Members of the Armed Forces may not receive benefits under both subsection (a) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.'', and redesignated former subsec. (d) as (c).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as a note under section 2001 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Members of armed forces assigned to Defense Intelligence Agency, entitlement to benefits similar to those provided by this section, see section 432 of Title 37, Pay and Allowances of the Uniformed Services.

§ 1606. Uniform allowance: civilian employees

(a) The Secretary of Defense may pay an allowance under this section to any civilian employee of the Defense Intelligence Agency who—

(1) is assigned to a Defense Attaché Office outside the United States; and

(2) is required by regulation to wear a prescribed uniform in performance of official duties.

(b) Notwithstanding section 5901(a) of title 5, the amount of any such allowance shall be the greater of the following:

(1) The amount provided for employees of the Department of State assigned to positions outside the United States and required by regulation to wear a prescribed uniform in performance of official duties.

(2) The maximum allowance provided under section 1593(b) of this title.

(c) An allowance paid under this section shall be treated in the same manner as is provided in subsection (c) of section 5901 of title 5 for an allowance paid under that section.

(Added Pub. L. 100–178, title VI, § 601(a), Dec. 2, 1987, 101 Stat. 1015; amended Pub. L. 101–189, div. A, title III, § 336(b), Nov. 29, 1989, 103 Stat. 1419.)

AMENDMENTS

1989—Subsec. (b)(2). Pub. L. 101–189 substituted ''The maximum allowance provided under section 1593(b) of this title'' for ''$360 per year''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–189 effective Jan. 1, 1990, see section 336(c) of Pub. L. 101–189, set out as an Effective Date note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1593 of this title.

[§ 1607. Renumbered § 424]

§ 1608. Financial assistance to certain employees in acquisition of critical skills

(a) The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees of the Defense Intelligence Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) Any payments made by the Secretary to carry out the program required to be established

by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 101–193, title V, §507(a)(1), Nov. 30, 1989, 103 Stat. 1709.)

EFFECTIVE DATE

Section 507(b) of Pub. L. 101–193 provided that: ''Section 1608 of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Nov. 30, 1989].''

[CHAPTER 85—REPEALED]

[§1621. Repealed. Pub. L. 101–510, div. A, title XII, §1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474]

Section, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 697; amended Pub. L. 99–433, title I, §110(g)(2), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, §7(c)(2), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–189, div. A, title VIII, §853(c)(1), Nov. 29, 1989, 103 Stat. 1518, defined ''program manager'', ''procurement command'', and ''major defense acquisition program''.

EFFECTIVE DATE OF REPEAL

Section 1207(c)(4) of Pub. L. 101–510 and section 1061(a)(26)(C)(i) of Pub. L. 102–190 provided that the repeal of this section is effective Oct. 1, 1993.

[§1622. Repealed. Pub. L. 101–510, div. A, title XII, §1207(c)(1), Nov. 5, 1990, 104 Stat. 1665]

Section, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–500, §101(c) [title X, §933], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161; Pub. L. 99–591, §101(c) [title X, §933], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, §933, Nov. 14, 1986, 100 Stat. 3940, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, §853(c)(2), Nov. 29, 1989, 103 Stat. 1518, related to education, training, and experience requirements for persons assigned as program managers of major defense acquisition programs.

EFFECTIVE DATE OF REPEAL

Section 1207(c)(1) of Pub. L. 101–510 provided that the repeal of this section is effective Oct. 1, 1991.

[§1623. Repealed. Pub. L. 101–510, div. A, title XII, §1207(c)(3), Nov. 5, 1990, 104 Stat. 1665]

Section, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(10), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, §7(j)(4), Apr. 21, 1987, 101 Stat. 283; Pub. L. 101–189, div. A, title VIII, §853(c)(3), Nov. 29, 1989, 103 Stat. 1519, related to education, training, and experience requirements for general and flag officers assigned to a procurement command.

EFFECTIVE DATE OF REPEAL

Section 1207(c)(3) of Pub. L. 101–510 provided that the repeal of this section is effective Oct. 1, 1992.

[§1624. Repealed. Pub. L. 101–510, div. A, title XII, §1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474]

Section, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 698, required a training program for quality assurance personnel.

EFFECTIVE DATE OF REPEAL

Section 1207(c)(4) of Pub. L. 101–510 and section 1061(a)(26)(C)(i) of Pub. L. 102–190 provided that the repeal of this section is effective Oct. 1, 1993.

CHAPTER 87—DEFENSE ACQUISITION WORKFORCE

Subchapter		Sec.
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AMENDMENTS

1991—Pub. L. 102–25, title VII, §704(b)(1), Apr. 6, 1991, 105 Stat. 119, made technical amendment to directory language of Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638, which enacted this chapter.

SUBCHAPTER I—GENERAL AUTHORITIES AND RESPONSIBILITIES

Sec.
1701. Management policies.
1702. Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities.
1703. Director of Acquisition Education, Training, and Career Development.
1704. Service acquisition executives: authorities and responsibilities.
1705. Directors of Acquisition Career Management in the military departments.
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1707. Personnel in the Office of the Secretary of Defense and in the Defense Agencies.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title IX, §904(d)(2), Nov. 30, 1993, 107 Stat. 1728, inserted ''and Technology'' after ''Acquisition'' in item 1702.

§1701. Management policies

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in acquisition positions in the Department of Defense.

(b) UNIFORM IMPLEMENTATION.—The Secretary shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established in accordance with this chapter are uniform in their implementation throughout the Department of Defense.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638.)

EFFECTIVE DATE

Section 1211 of title XII of Pub. L. 101–510 provided that: ''Except as otherwise provided in this title [see Short Title note below], this title and the amendments made by this title, including chapter 87 of title 10, United States Code (as added by section 1202), shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

SHORT TITLE

Section 1201 of title XII of Pub. L. 101–510 provided that: ''This title [enacting this chapter, sections 5379 and 5380 of Title 5, Government Organization and Employees, and section 317 of Title 37, Pay and Allowances of the Uniformed Services, amending sections 101 and 2435 of this title and sections 4107, 4301, 5102, 5532, 5724, 5742, 5924, 5942, 8344, and 8468 of Title 5, repealing sections 1621 to 1624 of this title, enacting provisions set out as notes under this section and sections 1621 to 1623, 1705, 1721, 1722, 1724, 1733, 1734, 1746, 1761, 1762, and 2435

of this title, sections 3326, 5380, and 5532 of Title 5, and section 317 of Title 37, and repealing provisions set out as a note under section 2304 of this title] may be cited as the 'Defense Acquisition Workforce Improvement Act'.''

REGULATIONS

Section 1210(a) of title XII of Pub. L. 101–510 provided that: ''Unless otherwise provided in this title [see Short Title note above] and in subsection (b) [set out below], the Secretary of Defense shall promulgate regulations to implement this title and the amendments made by this title not later than one year after the date of the enactment of this Act [Nov. 5, 1990].''

EVALUATION BY COMPTROLLER GENERAL

Section 1208 of title XII of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(b)(2), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–484, div. A, title VIII, § 812(g), Oct. 23, 1992, 106 Stat. 2452, provided that:

''(a) EVALUATION.—The Comptroller General shall conduct an independent evaluation of the actions taken by the Secretary of Defense to carry out the requirements of this title and the amendments made by this title [see Short Title note above]. Not later than February 1, 1993, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the evaluation required by this subsection. Such report shall include—

''(1) an analysis of the effectiveness of the actions taken by the Secretary to carry out the requirements of this title and the amendments made by this title; and

''(2) such legislative and administrative recommendations as the Comptroller General considers appropriate to meet the objectives of this title and the amendments made by this title.

''(b) ANNUAL REPORTS.—(1) For each of the years 1991 through 1998, the Comptroller General shall review the waiver documents submitted to the Director of Acquisition Education, Training, and Career Development under sections 1724(d), 1732(d), and 1734(d) of title 10, United States Code (as added by section 1202). In conducting the review, the Comptroller General shall determine whether waivers were granted in compliance with chapter 87 of such title (as added by section 1202).

''(2) The Comptroller General shall submit to Congress a report on the results of each review conducted pursuant to paragraph (1). The report shall include a general discussion of the use of the waiver authority provided under chapter 87 of title 10, United States Code (as added by section 1202), and an identification of any instances in which a waiver was not properly granted under such chapter.

''(3) Each report required by paragraph (2) shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] not later than February 1 of the year following a year for which a review is conducted pursuant to paragraph (1).''

DEADLINES FOR QUALIFICATION REQUIREMENTS

Section 1210(b) of Pub. L. 101–510 provided that: ''Not later than October 1, 1992, the Secretary of Defense shall prescribe regulations to implement sections 1723, 1724, and 1732 of title 10, United States Code (as added by section 1202).''

§ 1702. Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology shall carry out all powers, functions, and duties of the Secretary of Defense with respect to the acquisition workforce in the Department of Defense. The Under Secretary shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented throughout the Department of Defense.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1638; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in section catchline and in text.

§ 1703. Director of Acquisition Education, Training, and Career Development

The Under Secretary of Defense for Acquisition and Technology shall appoint a Director of Acquisition Education, Training, and Career Development within the office of the Under Secretary to assist the Under Secretary in the performance of his duties under this chapter.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1707 of this title.

§ 1704. Service acquisition executives: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of the military department concerned, the service acquisition executive for each military department shall carry out all powers, functions, and duties of the Secretary concerned with respect to the acquisition workforce within the military department concerned and shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented in that department.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1705. Directors of Acquisition Career Management in the military departments

There shall be a Director of Acquisition Career Management for each military department within the office of the service acquisition executive to assist the executive in the performance of his duties under this chapter. The Secretary of the Navy, acting through the service acquisition executive, may appoint separate directors for the Navy and the Marine Corps.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1639.)

LEVEL OF DIRECTOR OF ACQUISITION CAREER MANAGEMENT BEFORE NOVEMBER 6, 1993

Section 1209(a) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(A), Apr. 6, 1991, 105 Stat.

119, provided that: ''Before November 6, 1993, the position of Director of Acquisition Career Management (as established by section 1705 of title 10, United States Code, as added by section 1202) may be held only by—

''(1) a civilian employee in a position in the Civil Service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions in level V of the Executive Schedule under section 5316 of title 5, United States Code; or

''(2) a commissioned officer serving in the grade of major general or rear admiral or a higher grade.''

§1706. Acquisition career program boards

(a) ESTABLISHMENT.—The Secretary of each military department, acting through the service acquisition executive, shall establish an acquisition career program board to advise the service acquisition executive in managing the accession, training, education, and career development of military and civilian personnel in the acquisition workforce and in selecting individuals for an Acquisition Corps under section 1731 of this title.

(b) COMPOSITION OF BOARD.—Each acquisition career program board shall include the Director of Acquisition Career Management (or his representative), the Assistant Secretary with responsibility for manpower (or his representative), and the military and civilian senior officials with responsibility for personnel development in the various acquisition career fields. The service acquisition executive (or his representative) shall be the head of the board.

(c) SUBORDINATE BOARDS.—The Secretary of a military department may establish a subordinate board structure in the department to which functions of the acquisition career program board may be delegated.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§1707. Personnel in the Office of the Secretary of Defense and in the Defense Agencies

(a) POLICIES.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall establish and implement, in such manner as the Secretary considers appropriate, policies and procedures for the effective management, including accession, education, training, and career development, of persons serving in acquisition positions in the Office of the Secretary of Defense and the Defense Agencies. Such policies and procedures shall include (1) the establishment of one or more Acquisition Corps with respect to such persons, and (2) the establishment of an acquisition career program board (and any appropriate subordinate board structure) with respect to such persons. The Secretary shall ensure that, to the maximum extent practicable, such policies and procedures are as uniform as practicable with the policies established under this chapter for the military departments.

(b) MANAGEMENT.—The Director of Acquisition Education, Training, and Career Development appointed under section 1703 of this title shall serve as the Director of Acquisition Career Management for the Office of the Secretary of Defense and for the Defense Agencies.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

SUBCHAPTER II—DEFENSE ACQUISITION POSITIONS

Sec.
1721. Designation of acquisition positions.
1722. Career development.
1723. General education, training, and experience requirements.
1724. Contracting positions: qualification requirements.
1725. Office of Personnel Management approval.

§1721. Designation of acquisition positions

(a) DESIGNATION.—The Secretary of Defense shall designate in regulations those positions in the Department of Defense that are acquisition positions for purposes of this chapter.

(b) REQUIRED POSITIONS.—In designating the positions under subsection (a), the Secretary shall include, at a minimum, all acquisition-related positions in the following areas:

(1) Program management.

(2) Systems planning, research, development, engineering, and testing.

(3) Procurement, including contracting.

(4) Industrial property management.

(5) Logistics.

(6) Quality control and assurance.

(7) Manufacturing and production.

(8) Business, cost estimating, financial management, and auditing.

(9) Education, training, and career development.

(10) Construction.

(11) Joint development and production with other government agencies and foreign countries.

(c) MANAGEMENT HEADQUARTERS ACTIVITIES.—The Secretary also shall designate as acquisition positions under subsection (a) those acquisition-related positions which are in management headquarters activities and in management headquarters support activities. For purposes of this subsection, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Directive 5100.73, entitled ''Department of Defense Management Headquarters and Headquarters Support Activities'', dated November 25, 1988.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1640; amended Pub. L. 102–25, title VII, §701(j)(1), Apr. 6, 1991, 105 Stat. 116.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–25 substituted ''Activities', dated'' for ''Activities,' dated'' in last sentence.

TWENTY PERCENT REDUCTION IN DEFENSE ACQUISITION WORKFORCE

Section 905 of Pub. L. 101–510, which required Secretary of Defense to reduce number of employees in De-

partment of Defense acquisition workforce on last day of each of fiscal years 1991 through 1995 below number of employees in such workforce on last day of preceding fiscal year by not less than number equal to 4 percent of number of employees in such workforce on Sept. 30, 1990, and which defined ''Department of Defense acquisition workforce'', was repealed by Pub. L. 102–190, div. A, title IX, § 904, Dec. 5, 1991, 105 Stat. 1451.

DEADLINE FOR DESIGNATION OF ACQUISITION POSITIONS

Section 1209(b) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(B), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that: ''The designation of acquisition positions required by section 1721 of title 10, United States Code (as added by section 1202), shall be made by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, not later than October 1, 1991.''

§ 1722. Career development

(a) CAREER PATHS.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall ensure that appropriate career paths for civilian and military personnel who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of civilians and members of the armed forces to the most senior acquisition positions. The Secretary shall make available published information on such career paths.

(b) LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—(1) The Secretary of Defense shall ensure that no requirement or preference for a member of the armed forces is used in the consideration of persons for acquisition positions, except as provided in the policy established under paragraph (2).

(2)(A) The Secretary shall establish a policy permitting a particular acquisition position to be specified as available only to members of the armed forces if a determination is made, under criteria specified in the policy, that a member of the armed forces is required for that position by law, is essential for performance of the duties of the position, or is necessary for another compelling reason.

(B) Not later than December 15 of each year, the Under Secretary of Defense for Acquisition and Technology shall submit to the Secretary a report that lists each acquisition position that is restricted to members of the armed forces under such policy and the recommendation of the Under Secretary as to whether such position should remain so restricted.

(c) OPPORTUNITIES FOR CIVILIANS TO QUALIFY.—The Secretary of Defense shall ensure that civilian personnel are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior acquisition positions.

(d) BEST QUALIFIED.—The Secretary of Defense shall ensure that the policies established under this chapter are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

(e) MANAGEMENT OF WORKFORCE.—The Secretary of Defense shall ensure that the acquisition workforce is managed such that, for each fiscal year from October 1, 1991, through September 30, 1996, there is a substantial increase in the proportion of civilians (as compared to armed forces personnel) serving in critical acquisition positions in general, in program manager positions, and in division head positions over the proportion of civilians (as compared to armed forces personnel) in such positions on October 1, 1990.

(f) ASSIGNMENTS POLICY.—(1) The Secretary of Defense shall establish a policy on assigning military personnel to acquisition positions that provides for a balance between (A) the need for personnel to serve in career broadening positions, and (B) the need for requiring service in each such position for sufficient time to provide the stability necessary to effectively carry out the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(2) In implementing the policy established under paragraph (1), the Secretaries of the military departments shall provide, as appropriate, for longer lengths of assignments to acquisition positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in an acquisition position by a person serving in an acquisition position in the same acquisition career field.

(h) BALANCED WORKFORCE POLICY.—In the development of defense acquisition workforce policies under this chapter with respect to any civilian employees or applicants for employment, the Secretary of Defense or the Secretary of a military department (as applicable) shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1641; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsecs. (a), (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

MILITARY POSITIONS AND ASSIGNMENTS POLICY DEADLINES

Section 1209(c), (d) of Pub. L. 101–510 provided that:

''(c) MILITARY POSITIONS POLICY DEADLINES.—(1) The policy required by paragraph (2) of section 1722(b) of title 10, United States Code (as added by section 1202), shall be established by the Secretary of Defense not later than October 1, 1991.

''(2) The first report required by section 1722(b)(2)(B) of title 10, United States Code (as added by section 1202), shall be submitted to the Secretary of Defense not later than September 30, 1993.

''(d) ASSIGNMENTS POLICY DEADLINE.—Not later than October 1, 1991, the Secretary of Defense shall establish, and require commencement of implementation of, an assignments policy pursuant to section 1722(f) of title 10, United States Code (as added by section 1202).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1762 of this title.

§1723. General education, training, and experience requirements

(a) QUALIFICATION REQUIREMENTS.—The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. Unless otherwise provided in this chapter, such requirements shall take effect not later than October 1, 1993. In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.

(b) LIMITATION ON CREDIT FOR TRAINING OR EDUCATION.—Not more than one year of a period of time spent pursuing a program of academic training or education in acquisition may be counted toward fulfilling any requirement established under this chapter for a certain period of experience.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1642.)

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

Pub. L. 102–484, div. A, title VIII, §812(c), Oct. 23, 1992, 106 Stat. 2451, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall develop fulfillment standards, and implement a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of title 10, United States Code. Such fulfillment standards shall consist of criteria for determining whether an individual has demonstrated competence in the areas that would be taught in the training courses required under those sections. If an individual meets the appropriate fulfillment standard, the applicable training requirement is fulfilled.

''(2) The fulfillment standards developed under paragraph (1) shall take effect as of November 5, 1990, and shall cease to be in effect on October 1, 1997.

''(3) The fulfillment standards required under paragraph (1) shall be developed not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1725, 1735 of this title.

§1724. Contracting positions: qualification requirements

(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that, beginning on October 1, 1993, in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the small purchase threshold referred to in section 2304(g) of this title, a person must (except as provided in subsections (c) and (d))—

(1) have completed all mandatory contracting courses required for a contracting officer at the grade level, or in the position within the grade of the General Schedule (in the case of an employee), that the person is serving in;

(2) have at least two years of experience in a contracting position;

(3)(A) have received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees, (B) have completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management, or (C) have passed an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the disciplines listed in subparagraph (B); and

(4) meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense for the position.

(b) GS–1102 SERIES.—The Secretary of Defense shall require that, beginning on October 1, 1993, a person may not be employed by the Department of Defense in the GS–1102 occupational series unless the person (except as provided in subsections (c) and (d)) meets the requirements set forth in subsection (a)(3).

(c) EXCEPTIONS.—(1) The requirements set forth in subsections (a)(3) and (b) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

(2) The requirements of subsections (a) and (b) shall not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same or lower grade and involving the same or lower level of responsibilities as the position in which the employee is serving on such date.

(d) WAIVER.—The acquisition career program board of a military department may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of that military department if the board certifies that the employee possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 103–35, title I, §101, May 31, 1993, 107 Stat. 97.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–35 inserted ''or lower'' before ''grade'' and before ''level''.

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

CREDIT FOR EXPERIENCE IN CERTAIN POSITIONS

Section 1209(i) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(D), Apr. 6, 1991, 105 Stat. 119, provided that: ''For purposes of meeting any requirement under chapter 87 of title 10, United States Code (as added by section 1202), for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of such title, any period of time spent serving in a position later designated as an acquisition position or a critical acquisition position under such chapter may be counted as experience in such a position for such purposes.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1725, 1762 of this title.

§ 1725. Office of Personnel Management approval

(a) QUALIFICATION REQUIREMENTS.—The Secretary of Defense shall submit any requirement with respect to civilian employees that is established under section 1723 or under section 1724(a)(4) of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(b) EXAMINATIONS.—The Secretary of Defense shall submit examinations to be given to civilian employees under subsection (a)(3) or (b) of section 1724 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1643.)

SUBCHAPTER III—ACQUISITION CORPS

Sec.
1731. Acquisition Corps: in general.
1732. Selection criteria and procedures.
1733. Critical acquisition positions.
1734. Career development.
1735. Education, training, and experience requirements for critical acquisition positions.
1736. Applicability.
1737. Definitions and general provisions.

§ 1731. Acquisition Corps: in general

(a) ACQUISITION CORPS.—The Secretary of Defense shall ensure that an Acquisition Corps is established for each of the military departments and one or more Corps, as he considers appropriate, for the other components of the Department of Defense. A separate Acquisition Corps may be established for each of the Navy and the Marine Corps.

(b) PROMOTION RATE FOR OFFICERS IN ACQUISITION CORPS.—The Secretary of Defense shall ensure that the qualifications of commissioned officers selected for an Acquisition Corps are such that those officers are expected, as a group, to be promoted at a rate not less than the rate for all line (or the equivalent) officers of the same armed force (both in the zone and below the zone) in the same grade.

(c) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees established under section 1732 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1644.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1706, 1762 of this title.

§ 1732. Selection criteria and procedures

(a) SELECTION CRITERIA AND PROCEDURES.—Selection for membership in an Acquisition Corps shall be made in accordance with criteria and procedures established by the Secretary of Defense. Such criteria and procedures shall be in effect on and after October 1, 1993.

(b) ELIGIBILITY CRITERIA.—Except as provided in subsections (c) and (d), only persons who meet all of the following requirements may be considered for service in the Corps:

(1)(A) In the case of an employee, the person must be currently serving in a position within grade GS–13 or above of the General Schedule.

(B) In the case of a member of the armed forces, the person must be currently serving in the grade of major or, in the case of the Navy, lieutenant commander, or a higher grade.

(C) In the case of an applicant for employment, the person must have experience in government or industry equivalent to the experience of a person in a position described in subparagraph (A) or (B), as validated by the appropriate career program management board.

(2) The person must meet the educational requirements prescribed by the Secretary of Defense. Such requirements, at a minimum, shall include both of the following:

(A) A requirement that the person—

(i) has received a baccalaureate degree at an accredited educational institution authorized to grant baccalaureate degrees, or

(ii) has been certified by the acquisition career program board of the employing military department as possessing significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience.

(B) A requirement that the person has completed—

(i) at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from

among the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; or

(ii) at least 24 semester credit hours (or the equivalent) from an accredited institution of higher education in the person's career field and 12 semester credit hours (or the equivalent) from such an institution from among the disciplines listed in clause (i) or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i).

(3) The person must meet experience requirements prescribed by the Secretary of Defense. Such requirements shall, at a minimum, include a requirement for at least four years of experience in an acquisition position in the Department of Defense or in a comparable position in industry or government.

(4) The person must meet such other requirements as the Secretary of Defense or the Secretary of the military department concerned prescribes by regulation.

(c) EXCEPTIONS.—(1) The requirements of subsections (b)(2)(A) and (b)(2)(B) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions or in comparable positions in other government agencies or the private sector.

(2) The requirements of subsections (b)(2)(A) and (b)(2)(B) shall not apply to any employee who is serving in an acquisition position on October 1, 1991, and who does not have 10 years of experience as described in paragraph (1) if the employee passes an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management. The Secretary of Defense shall submit examinations to be given to civilian employees under this paragraph to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.

(d) WAIVER.—(1) Except as provided in paragraph (2), the acquisition career program board of a military department may waive any or all of the requirements of subsection (b) with respect to an employee of that military department if the board certifies that the employee possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(2) The acquisition career program board of a military department may not waive the requirements of subsection (b)(2)(A)(ii).

(e) MOBILITY STATEMENTS.—(1) The Secretary of Defense is authorized to require civilians in an Acquisition Corps to sign mobility statements.

(2) The Secretary of Defense shall identify which categories of civilians in an Acquisition Corps, as a condition of serving in the Corps, shall be required to sign mobility statements. The Secretary shall make available published information on such identification of categories.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1644; amended Pub. L. 102–484, div. A, title VIII, § 812(e)(1), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–89, § 3(b)(3)(B), Sept. 30, 1993, 107 Stat. 982.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including any employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(2)(B)(ii). Pub. L. 102–484 inserted before period at end ''or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EQUIVALENT TRAINING UNDER SUBSECTION (b)(2)(B)(ii)

Section 812(e)(2) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall prescribe equivalent training for purposes of clause (ii) of section 1732(b)(2)(B) of title 10, United States Code (as amended by paragraph (1)), not later than 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1731, 1762 of this title.

§ 1733. Critical acquisition positions

(a) REQUIREMENT FOR CORPS MEMBER.—On and after October 1, 1993, a critical acquisition position may be filled only by a member of an Acquisition Corps.

(b) DESIGNATION OF CRITICAL ACQUISITION POSITIONS.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

(A) Any acquisition position which—

(i) in the case of employees, is required to be filled by an employee in a position within grade GS–14 or above of the General Schedule, or in the Senior Executive Service; or

(ii) in the case of members of the armed forces, is required to be filled by a commissioned officer of the Army, Navy, Air Force, or Marine Corps who is serving in the grade

of lieutenant colonel, or, in the case of the Navy, commander, or a higher grade.

(B) Other selected acquisition positions not covered by subparagraph (A), including the following:

(i) Program executive officer.

(ii) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

(iii) Deputy program manager of a major defense acquisition program.

(C) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

(2) The Secretary shall periodically publish a list of the positions designated under this subsection.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L. 102–484, div. A, title X, § 1052(22), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–89, § 3(b)(3)(C), Sept. 30, 1993, 107 Stat. 983.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(A)(i), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including an employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(1)(B)(ii). Pub. L. 102–484 substituted ''1737(a)(3)'' for ''1736(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE FOR REQUIREMENT FOR CORPS MEMBERS TO FILL CRITICAL ACQUISITION POSITIONS

Section 1209(f) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(b)(3)(C), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that: ''Notwithstanding section 1733(a) of title 10, United States Code (as added by section 1202), the Secretaries of the military departments shall make every effort to fill critical acquisition positions by Acquisition Corps members as soon as possible after the date of the enactment of this Act [Nov. 5, 1990]. For each of the first three years after the date of the enactment of this Act, the report of the Under Secretary of Defense for Acquisition and Technology to the Secretary of Defense under section 1762 of such title shall include the number of critical acquisition positions filled by Acquisition Corps members.''

PUBLICATION OF LIST OF CRITICAL ACQUISITION POSITIONS

Section 1209(g) of Pub. L. 101–510 provided that: ''The Secretary of Defense shall publish the first list of positions designated as critical acquisition positions under section 1733(b)(2) of title 10, United States Code (as added by section 1202), not later than October 1, 1992.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1723, 1736 of this title; title 37 section 317.

§ 1734. Career development

(a) THREE-YEAR ASSIGNMENT PERIOD.—(1) Except as provided under subsection (b) and paragraph (3), the Secretary of each military department, acting through the service acquisition executive for that department, shall provide that, on and after October 1, 1993, any person who is assigned to a critical acquisition position shall be assigned to the position for not fewer than three years. Except as provided in subsection (d), the Secretary concerned may not reassign a person from such an assignment before the end of the three-year period.

(2) A person may not be assigned to a critical acquisition position unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position for at least three years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (b).

(3) The assignment period requirement of the first sentence of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(b) ASSIGNMENT PERIOD FOR PROGRAM MANAGERS.—(1) The Secretary of Defense shall prescribe in regulations—

(A) a requirement that, on and after October 1, 1991, a program manager and a deputy program manager (except as provided in paragraph (3)) of a major defense acquisition program be assigned to the position at least until completion of the major milestone that occurs closest in time to the date on which the person has served in the position for four years; and

(B) a requirement that, on and after October 1, 1991, to the maximum extent practicable, a program manager who is the replacement for a reassigned program manager arrive at the assignment location before the reassigned program manager leaves.

Except as provided in subsection (d), the Secretary concerned may not reassign a program manager or deputy program manager from such an assignment until after such major milestone has occurred.

(2) A person may not be assigned to a critical acquisition position as a program manager or deputy program manager of a major defense acquisition program unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position at least until completion of the first major milestone that occurs closest in time to the date on which the person has served in the position for four years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (d).

(3) The assignment period requirement under subparagraph (A) of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(c) MAJOR MILESTONE REGULATIONS.—(1) The Secretary of Defense shall issue regulations de-

fining what constitutes major milestones for purposes of this section. The service acquisition executive of each military department shall establish major milestones at the beginning of a major defense acquisition program consistent with such regulations and shall use such milestones to determine the assignment period for program managers and deputy program managers under subsection (b).

(2) The regulations shall require that major milestones be clearly definable and measurable events that mark the completion of a significant phase in a major defense acquisition program and that such milestones be the same as the milestones contained in the baseline description established for the program pursuant to section 2435(a) of this title. The Secretary shall require that the major milestones as defined in the regulations be included in the Selected Acquisition Report required for such program under section 2432 of this title.

(d) WAIVER OF ASSIGNMENT PERIOD.—(1) With respect to a person assigned to a critical acquisition position, the Secretary concerned may waive the prohibition on reassignment of that person (in subsection (a)(1) or (b)(1)) and the service obligation in an agreement executed by that person (under subsection (a)(2) or (b)(2)), but only in exceptional circumstances in which a waiver is necessary for reasons permitted in regulations prescribed by the Secretary of Defense.

(2) The authority to grant such waivers may be delegated by the service acquisition executive of a military department only to the Director of Acquisition Career Management for the military department.

(3) With respect to each waiver granted under this subsection, the service acquisition executive (or his delegate) shall set forth in a written document the rationale for the decision to grant the waiver. The document shall be submitted to the Director of Acquisition Education, Training, and Career Development.

(e) ROTATION POLICY.—(1) The Secretary of Defense shall establish a policy encouraging the rotation of members of an Acquisition Corps serving in critical acquisition positions to new assignments after completion of five years of service in such positions, or, in the case of a program manager, after completion of a major program milestone, whichever is longer. Such rotation policy shall be designed to ensure opportunities for career broadening assignments and an infusion of new ideas into critical acquisition positions.

(2) The Secretary of Defense shall establish a procedure under which the assignment of each person assigned to a critical acquisition position shall be reviewed on a case-by-case basis, by the acquisition career program board of the department concerned, for the purpose of determining whether the Government and such person would be better served by a reassignment to a different position. Such a review shall be carried out with respect to each such person not later than five years after that person is assigned to a critical position. Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.

(f) CENTRALIZED JOB REFERRAL SYSTEM.—The Secretary of Defense shall prescribe regulations providing for the use of centralized lists to ensure that persons are selected for critical positions without regard to geographic location of applicants for such positions.

(g) EXCHANGE PROGRAM.—(1) The Secretary of Defense shall establish, for purposes of broadening the experience of members of each Acquisition Corps, a test program in which members of a Corps serving in a military department or Defense Agency are assigned or detailed to an acquisition position in another department or agency. Under the test program, the Secretary of Defense shall ensure that, to the maximum extent practicable, at least 5 percent of the members of the Acquisition Corps shall serve in such exchange assignments each year. The test program shall operate for not less than a period of three years.

(2) The Secretary of Defense shall submit the portion of the test program applicable to civilian employees to the Director of the Office of Personnel Management for approval. If the Director does not disapprove that portion of the test program within 30 days after the date on which the Director receives it, that portion of the test program is deemed to be approved by the Director.

(h) RESPONSIBILITY FOR ASSIGNMENTS.—The Secretary of each military department, acting through the service acquisition executive for that department, is responsible for making assignments of civilian and military members of the Acquisition Corps of that military department to critical acquisition positions.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L. 102–484, div. A, title VIII, §812(a), (b), Oct. 23, 1992, 106 Stat. 2450.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–484, §812(b)(1)(A), inserted before first comma ''and paragraph (3)''.

Subsec. (a)(3). Pub. L. 102–484, §812(b)(1)(B), added par. (3).

Subsec. (b)(1)(A). Pub. L. 102–484, §812(b)(2)(A), inserted ''(except as provided in paragraph (3))'' after ''deputy program manager''.

Subsec. (b)(3). Pub. L. 102–484, §812(b)(2)(B), added par. (3).

Subsec. (e)(2). Pub. L. 102–484, §812(a), inserted at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

JOB REFERRAL SYSTEM DEADLINE

Section 1209(e) of Pub. L. 101–510 provided that: ''Not later than October 1, 1991, the Secretary of Defense shall prescribe regulations required under section 1734(f) of title 10, United States Code (as added by section 1202).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1735, 1762 of this title; title 37 section 317.

§1735. Education, training, and experience requirements for critical acquisition positions

(a) QUALIFICATION REQUIREMENTS.—In establishing the education, training, and experience requirements under section 1723 of this title for critical acquisition positions, the Secretary of Defense shall, at a minimum, include the re-

quirements set forth in subsections (b) through (e).

(b) PROGRAM MANAGERS AND DEPUTY PROGRAM MANAGERS.—Before being assigned to a position as a program manager or deputy program manager of a major defense acquisition program or a significant nonmajor defense acquisition program, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution determined to be comparable by the Secretary of Defense;

(2) must have executed a written agreement as required in section 1734(b)(2); and

(3) in the case of—

(A) a program manager of a major defense acquisition program, must have at least eight years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization;

(B) a program manager of a significant nonmajor defense acquisition program, must have at least six years of experience in acquisition;

(C) a deputy program manager of a major defense acquisition program, must have at least six years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization; and

(D) a deputy program manager of a significant nonmajor defense acquisition program, must have at least four years of experience in acquisition.

(c) PROGRAM EXECUTIVE OFFICERS.—Before being assigned to a position as a program executive officer, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution in the private sector determined to be comparable by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology;

(2) must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position; and

(3) must have held a position as a program manager or a deputy program manager.

(d) GENERAL AND FLAG OFFICERS AND CIVILIANS IN EQUIVALENT POSITIONS.—Before a general or flag officer, or a civilian serving in a position equivalent in grade to the grade of such an officer, may be assigned to a critical acquisition position, the person must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position.

(e) SENIOR CONTRACTING OFFICIALS.—Before a person may be assigned to a critical acquisition position as a senior contracting official, the person must have at least four years experience in contracting.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1648; amended Pub. L. 102–484, div. A, title VIII, § 812(d), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(3). Pub. L. 102–484 struck out ''or deputy program manager'' after ''program manager'' in subpars. (A) and (B), struck out ''and'' at end of subpar. (A), substituted semicolon for period at end of subpar. (B), and added subpars. (C) and (D).

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1736 of this title.

§ 1736. Applicability

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the qualification requirements prescribed pursuant to section 1735 shall apply to all critical acquisition positions not later than October 1, 1992.

(b) PROGRAM MANAGERS.—The qualification requirements prescribed pursuant to section 1735 shall apply with respect to program manager positions not later than October 1, 1991.

(c) EXCEPTIONS.—The qualification requirements prescribed pursuant to sections 1733(a) and 1735(a) shall not apply—

(1) to an employee who is serving in a critical acquisition position on October 1, 1992, for purposes of qualifying to continue to serve in such position; or

(2) to a person who is serving in a program manager position on October 1, 1991, for purposes of qualifying to continue to serve in such position.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1649.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1762 of this title.

§ 1737. Definitions and general provisions

(a) DEFINITIONS.—In this subchapter:

(1) The term ''program manager'' means, with respect to a defense acquisition program, the member of an Acquisition Corps responsible for managing the program, regardless of the title given the member.

(2) The term ''deputy program manager'' means the person who has authority to act on behalf of the program manager in the absence of the program manager.

(3) The term ''significant nonmajor defense acquisition program'' means a Department of Defense acquisition program that is not a major defense acquisition program (as defined in section 2430 of this title) and that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a

major system or an eventual total expenditure for procurement of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system.

(4) The term ''program executive officer'' has the meaning given such term in regulations prescribed by the Secretary of Defense.

(5) The term ''senior contracting official'' means a director of contracting, or a principal deputy to a director of contracting, serving in the office of the Secretary of a military department, the headquarters of a military department, the head of a Defense Agency, a subordinate command headquarters, or in a major systems or logistics contracting activity in the Department of Defense.

(b) LIMITATION.—Any civilian or military member of the Corps who does not meet the education, training, and experience requirements for a critical acquisition position established under this subchapter may not carry out the duties or exercise the authorities of that position, except for a period not to exceed six months, unless a waiver of the requirements is granted under subsection (c).

(c) WAIVER.—(1) The Secretary of each military department (acting through the service acquisition executive for that department) or the Secretary of Defense (acting through the Under Secretary of Defense for Acquisition and Technology) for Defense Agencies and other components of the Department of Defense may waive, on a case-by-case basis, the requirements established under this subchapter with respect to the assignment of an individual to a particular critical acquisition position. Such a waiver may be granted only if unusual circumstances justify the waiver or if the Secretary concerned (or official to whom the waiver authority is delegated) determines that the individual's qualifications obviate the need for meeting the education, training, and experience requirements established under this subchapter.

(2) The authority to grant such waivers may be delegated—

(A) in the case of the service acquisition executives of the military departments, only to the Director of Acquisition Career Management for the military department concerned; and

(B) in the case of the Under Secretary of Defense for Acquisition and Technology, only to the Director of Acquisition Education, Training, and Career Development.

(d) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees established under this subchapter to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1650; amended Pub. L. 102–190, div. A, title X, §1061(a)(8), (c), Dec. 5, 1991, 105 Stat. 1472, 1475; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (c)(1), (2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1991—Subsec. (a)(3). Pub. L. 102–190, §1061(c), substituted ''the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system'' for ''$50,000,000 (based on fiscal year 1980 constant dollars)'' and ''the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system'' for ''$250,000,000 (based on fiscal year 1980 constant dollars)''.

Subsec. (c)(2)(B). Pub. L. 102–190, §1061(a)(8), struck out comma after ''Director of Acquisition''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1733 of this title.

SUBCHAPTER IV—EDUCATION AND TRAINING

Sec.
1741. Policies and programs: establishment and implementation.
1742. Intern program.
1743. Cooperative education program.
1744. Scholarship program.
1745. Additional education and training programs available to acquisition personnel.
1746. Defense acquisition university structure.

§1741. Policies and programs: establishment and implementation

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the establishment and implementation of the education and training programs authorized by this subchapter.

(b) FUNDING LEVELS.—The Under Secretary of Defense for Acquisition and Technology each year shall recommend to the Secretary of Defense the funding levels to be requested in the defense budget to implement the education and training programs under this subchapter. The Secretary of Defense shall set forth separately the funding levels requested for such programs in the Department of Defense budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(c) PROGRAMS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall establish and implement the education and training programs authorized by this subchapter. In carrying out such requirement, the Secretary concerned shall ensure that such programs are established and implemented throughout the military department concerned and, to the maximum extent practicable, uniformly with the programs of the other military departments.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1651; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

§1742. Intern program

The Secretary of Defense shall require that each military department conduct an intern

program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1762 of this title.

§ 1743. Cooperative education program

The Secretary of Defense shall require that the Secretary of each military department conduct a department-wide cooperative education credit program under which students are employed by the Department of Defense in acquisition positions. Under the program, the Secretary shall enter into cooperative arrangements with one or more accredited institutions of higher education which provide for such institutions to grant undergraduate credit for work performed in such a position.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1762 of this title.

§ 1744. Scholarship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a scholarship program for the purpose of qualifying personnel for acquisition positions in the Department of Defense.

(b) ELIGIBILITY.—To be eligible to participate in the scholarship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an accredited educational institution authorized to grant baccalaureate or graduate degrees (as appropriate);

(2) be pursuing a course of education that leads toward completion of a bachelor's, master's, or doctor's degree (as appropriate) in a qualifying field of study, as determined by the Secretary of Defense;

(3) sign an agreement described in subsection (c) under which the participant agrees to serve a period of obligated service in the Department of Defense in an acquisition position in return for payment of educational assistance as provided in the agreement; and

(4) meet such other requirements as the Secretary prescribes.

(c) AGREEMENT.—An agreement between the Secretary of Defense and a participant in the scholarship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary's agreement to provide the participant with educational assistance for a specified number (from one to four) of school years during which the participant is pursuing a course of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant's agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the course of education until completed, and (C) while enrolled in such course, to maintain an acceptable level of academic standing (as prescribed by the Secretary).

(3) The participant's agreement that, after successfully completing the course of education, the participant—

(A) shall accept, if offered within such time as shall be specified in the agreement, an appointment to a full-time acquisition position in the Department of Defense that is commensurate with the participant's academic degree and experience, and that is—

(i) in the excepted service, if the participant has not previously acquired competitive status, with the right, after successful completion of 2 years of service and such other requirements as the Office of Personnel Management may prescribe, to be appointed to a position in the competitive service, notwithstanding subchapter I of chapter 33 of title 5; or

(ii) in the competitive service, if the participant has previously acquired competitive status; and

(B) if appointed under subparagraph (A), shall serve for 1 calendar year for each school year or part thereof for which the participant was provided a scholarship under the scholarship program.

(d) REPAYMENT.—(1) Any person participating in a program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program if the person is voluntarily separated from service or involuntarily separated for cause from the Department of Defense before the end of the period for which the person has agreed to continue in the service of the Department of Defense in an acquisition position.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, a sum equal to the amount of the educational assistance is recoverable by the Government from the employee or his estate by—

(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to require that a position be offered to a person after such person successfully completes the course of education agreed to. However, if no position described in subsection (c)(3)(A) is offered within the time

specified in the agreement, the agreement shall be considered terminated.

(f) DEFINITIONS.—In this section, the terms ''competitive service'' and ''excepted service'' have the meanings provided those terms by sections 2102 and 2103, respectively, of title 5.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1652; amended Pub. L. 102–484, div. A, title VIII, §812(f), Oct. 23, 1992, 106 Stat. 2451.)

AMENDMENTS

1992—Subsec. (c)(2). Pub. L. 102–484, §812(f)(1), inserted ''and'' before ''(C)'' and substituted ''Secretary).'' for ''Secretary), and (D) after completion of the course of education, to serve as a full-time employee in an acquisition position in the Department of Defense for a period of time of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the scholarship program.''

Subsec. (c)(3). Pub. L. 102–484, §812(f)(2), added par. (3).

Subsecs. (e), (f). Pub. L. 102–484, §812(f)(3), added subsecs. (e) and (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1762 of this title.

§1745. Additional education and training programs available to acquisition personnel

(a) TUITION REIMBURSEMENT AND TRAINING.—The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) under section 4107(d)[1] of title 5 for acquisition personnel in the Department of Defense for the purposes described in that section. For purposes of such section 4107(d),[1] there is deemed to be, until September 30, 2001, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.

(b) REPAYMENT OF STUDENT LOANS.—The Secretary of Defense may repay all or part of a student loan under section 5379 of title 5 for an employee of the Department of Defense appointed to an acquisition position.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1653.)

REFERENCES IN TEXT

Section 4107(d) of title 5, referred to in subsec. (a), was redesignated section 4107(b) of title 5 by Pub. L. 103–226, §2(a)(5)(B), Mar. 30, 1994, 108 Stat. 112.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1762 of this title.

§1746. Defense acquisition university structure

(a) DEFENSE ACQUISITION UNIVERSITY STRUCTURE.—(1)[1] The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall establish and maintain a defense acquisition university structure to provide for—

(A) the professional educational development and training of the acquisition workforce; and

(B) research and analysis of defense acquisition policy issues from an academic perspective.

(b) CIVILIAN FACULTY MEMBERS.—(1) The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers in the defense acquisition university structure as the Secretary considers necessary.

(2) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

(3) In this subsection, the term ''defense acquisition university'' includes the Defense Systems Management College.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

EFFECTIVE DATE

Section 1209(h)(1) of Pub. L. 101–510 provided that: ''Subsection (b) of section 1746 of title 10, United States Code (as added by section 1202), shall take effect with respect to the Defense Systems Management College on the date of the enactment of this Act [Nov. 5, 1990].''

ESTABLISHMENT OF INITIAL DEFENSE ACQUISITION UNIVERSITY STRUCTURE

Section 1205 of Pub. L. 101–510, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(a) ESTABLISHMENT OF STRUCTURE.—Not later than October 1, 1991, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall prescribe regulations for the initial structure for a defense acquisition university under section 1746 of title 10, United States Code (as added by section 1202). The regulations shall include the following:

''(1) Operation under a charter developed by the Secretary of Defense.

''(2) Establishment of a university mission to achieve objectives formulated by the Secretary of Defense. Such objectives shall include—

''(A) the achievement of more efficient and effective use of available acquisition resources by coordinating Department of Defense acquisition education and training programs and tailoring them to support the careers of personnel in acquisition positions; and

''(B) the development of education, training, research, and publication capabilities in the area of acquisition.

''(3) Establishment of appropriate lines of authority (including relationships between the university and each of the existing acquisition education and training institutions and activities) and accountability for the accomplishment of the university mission (as established by the Secretary).

''(4) A coherent framework for the educational development of personnel in acquisition positions. Such framework shall cover courses of instruction from the basic level through intermediate and senior levels. At the senior level, the framework shall provide for a senior course as a substitute for, and equivalent to, existing senior professional military educational school courses, specifically designed for personnel serving in critical acquisition positions.

''(5) Appropriate organizations, such as a policy guidance council, composed of senior Department of Defense officials, to recommend or establish policy, and a board of visitors, composed of persons selected for their preeminence in the fields of academia, business, and the defense industry, to advise on organiza-

[1] See References in Text note below.

[1] So in original. No par. (2) has been enacted.

tion management, curricula, methods of instruction, facilities, and other matters of interest to the university.

''(6) An appropriate centralized mechanism, under the Under Secretary of Defense for Acquisition and Technology, to control the allocation of resources for purposes of conducting mandatory acquisition courses and other training, education, and research activities to achieve the objectives of the university, such as funding for students to attend courses of instruction, funding to conduct the courses, and funding to pay instructor salaries.

''(b) IMPLEMENTATION.—Not later than October 1, 1991, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall prescribe and submit to the Committees on Armed Services of the Senate and House of Representatives an implementation plan, including a charter, for the defense acquisition university structure. Not later than August 1, 1992, the Secretary of Defense shall carry out the implementation plan.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.
1761. Management information system.
1762. Report to Secretary of Defense.
1763. Reassignment of authority.
1764. Authority to establish different minimum experience requirements.

§ 1761. Management information system

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure that the military departments and Defense Agencies establish a management information system capable of providing standardized information to the Secretary on persons serving in acquisition positions.

(b) MINIMUM INFORMATION.—The management information system shall, at a minimum, provide for—

(1) the collection and retention of information concerning the qualifications, assignments, and tenure of persons in the acquisition workforce;

(2) any exceptions and waivers granted with respect to the application of qualification, assignment, and tenure policies, procedures, and practices to such persons;

(3) relative promotion rates for military personnel in the acquisition workforce; and

(4) collection of the information necessary for the Under Secretary of Defense for Acquisition and Technology and the Secretary of Defense to comply with the requirements of section 1762 for the years in which that section is in effect.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

ESTABLISHMENT OF MANAGEMENT INFORMATION SYSTEM

Section 1209(k) of Pub. L. 101–510 provided that:

''(1) Not later than October 1, 1991, the Secretary of Defense shall prescribe in regulations the requirements under section 1761 of title 10, United States Code (as added by section 1202), including data elements, for the uniform management information system.

''(2) The Secretary of Defense shall ensure that the requirements prescribed pursuant to paragraph (1) are implemented not later than October 1, 1992.''

§ 1762. Report to Secretary of Defense

(a) REPORT OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY.—Each year the Under Secretary of Defense for Acquisition and Technology shall transmit to the Secretary of Defense a report on the status of the defense acquisition workforce. Each annual report shall include, for each military department and Defense Agency and the Office of the Secretary of Defense, information on each category of information referred to in subsection (c).

(b) INCLUSION OF INFORMATION IN ANNUAL REPORT.—The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title the information in the report transmitted to the Secretary under subsection (a).

(c) INFORMATION.—The following information shall be included in the report transmitted to the Secretary under subsection (a) for the period covered by the report (which shall be shown for the Department of Defense as a whole and, with respect to paragraphs (1) through (12), separately for the Army, Navy, Air Force, Marine Corps, Defense Agencies, and Office of the Secretary of Defense):

(1) The number of acquisition positions specified under the policy established under section 1722(b)(2) of this title as being available, as of December 1 of the period covered by the report, only to members of the armed forces, set forth separately under each criterion established in the policy, together with a discussion of the types of positions that are so specified.

(2) The total number of persons serving in the Acquisition Corps as of December 1 of the period covered by the report, set forth separately for members of the armed forces and civilian employees, by grade level and by functional specialty.

(3) The total number of critical acquisition positions held as of December 1 of the period covered by the report, set forth separately for members of the armed forces and civilian employees, by grade level and by other appropriate categories (including by program manager, deputy program manager, and division head positions). For each such category, the report shall specify the number of civilians holding such positions compared to the total number of positions filled.

(4)(A) The promotion rate for officers in an acquisition corps considered for promotion from within the promotion zone, compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade, shown for all officers of the same armed force and for all line (or the equivalent) officers of the same armed force.

(B) The promotion rate for officers in an acquisition corps considered for promotion from

below the promotion zone, compared in the same manner as specified in subparagraph (A).

(C) If the promotion rates fail to meet the objective of section 1731(b) of this title, the Secretary of Defense shall notify Congress of such failures and of what actions the Secretary has taken or plans to take in reaction to such failures.

(5) The number of employees who met the requirement of section 1724(a)(3) or section 1724(b) of this title by passing an exam as described in section 1724(a)(3)(C), set forth separately for contracting officers and persons in the GS–1102 occupational series.

(6) The number of employees to whom the requirements of subsections (b)(2)(A) and (b)(2)(B) of section 1732 of this title did not apply because of the exceptions provided in paragraphs (1) and (2) of section 1732(c) of this title, set forth separately by type of exception.

(7) The number of employees certified by an acquisition career program board under section 1732(b)(2)(A)(ii) of this title.

(8) The number of program managers and deputy program managers who were reassigned after completion of a major milestone occurring closest in time to the date on which the person has served in the position for four years (as required under section 1734(b) of this title), and the proportion of those reassignments to the total number of reassignments of program managers and deputy program managers, set forth separately for program managers and deputy program managers. The Secretary also shall include the average length of assignment served by program managers and deputy program managers so reassigned.

(9) The number of persons, excluding those reported under paragraph (8), in critical acquisition positions who were reassigned after a period of three years or longer (as required under section 1734(a) of this title), and the proportion of those reassignments to the total number of reassignments of persons, excluding those reported under paragraph (8), in critical acquisition positions.

(10) The number of times a waiver authority was exercised under section 1724(d), 1732(d), 1734(d), or 1736(c) of this title or any other provision of this chapter (or other provision of law) which permits the waiver of any requirement relating to the acquisition workforce, and in the case of each such authority, the reasons for exercising the authority. The Secretary may present the information provided under this paragraph by category or grouping of types of waivers and reasons.

(11) The number of persons reviewed for reassignment pursuant to section 1734(e)(2) of this title and the number of persons reassigned as a result of such reviews, together with a discussion of the criteria used to determine reassignments.

(12) The number of persons participating in each of the programs described in sections 1742 through 1745 of this title, as of December 1 of the period covered by the report.

(13) The number of persons paid a bonus under section 317 of title 37 and the number of years of service agreed to, for each such bonus, by category.

(14) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

(d) EFFECTIVE DATE.—The requirements of this section shall apply to the years 1991 through 1998.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1654; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in heading and text.

TRANSITION PROVISION FOR REPORT REQUIREMENT

Section 1209(j) of Pub. L. 101–510 provided that: ''Each of the first three annual reports under section 1762(a) of title 10, United States Code (as added by section 1202), shall include as much information as is available with respect to requirements imposed under, or prescribed pursuant to, chapter 87 of title 10, United States Code (as added by such section), that have not taken effect as of the date of the report.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1761 of this title.

§1763. Reassignment of authority

On and after October 1, 1993, the Secretary of Defense may assign the responsibilities under this chapter of the Under Secretary of Defense for Acquisition and Technology to any other civilian official in the Office of the Secretary of Defense who is appointed by the President by and with the advice and consent of the Senate. If the Secretary takes action under the preceding sentence, he may authorize the secretaries of the military departments to assign the responsibilities of a senior acquisition executive under this chapter to any other civilian official in the military department who is appointed by the President by and with the advice and consent of the Senate.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1656; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728.)

AMENDMENTS

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

§1764. Authority to establish different minimum experience requirements

(a) AUTHORITY.—During the six-year period beginning on October 1, 1992, and ending on September 30, 1998, the Secretary of Defense may prescribe a different minimum number of years of experience to be required for eligibility for appointment to an acquisition position referred to in subsection (b) than is required for such position under or pursuant to any provision of this chapter. Any requirement prescribed under this section for a position referred to in any para-

graph of subsection (b) shall be applied uniformly to all positions referred to in such paragraph.

(b) APPLICABILITY.—This section applies to the following acquisition positions in the Department of Defense:

(1) Contracting officer.

(2) Program executive officer.

(3) Senior contracting official.

(c) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees that is prescribed under this section to the Director of the Office of Personnel Management for approval if the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(d) REPORT.—The Secretary of Defense shall notify Congress of each requirement prescribed under subsection (a) together with his reasons for prescribing such requirement.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1656.)

CHAPTER 89—VOLUNTEERS INVESTING IN PEACE AND SECURITY

Sec.
1801. Volunteer program to assist independent states of the former Soviet Union.
1802. Participants in program.
1803. Determining needs for volunteers; role of the Secretary of State.
1804. Compensation and benefits.
1805. Termination of program.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 22 section 5911.

§ 1801. Volunteer program to assist independent states of the former Soviet Union

The Secretary of Defense may, in coordination with the Secretary of State, carry out a program in accordance with this chapter to provide technical assistance to address the infrastructure needs of the independent states of the former Soviet Union. Assistance under the program shall be provided by volunteers who are retired members of the armed forces, or who are former members of the armed forces, who have been recently released from active duty.

(Added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551.)

EFFECTIVE DATE

Section 1322(d) of Pub. L. 102–484 provided that: ''Chapter 89 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1992.''

REIMBURSEMENT OF OTHER AGENCIES

Section 1322(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall reimburse other departments and agencies for all costs, direct or indirect, of participation in the program established under chapter 89 of title 10, United States Code, as added by subsection (a).''

STUDY TO DETERMINE PROGRAM NEED AND AVAILABILITY OF VOLUNTEERS

Section 1322(c) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall conduct a study to assess the need for the program under chapter 89 of title 10, United States Code, as added by subsection (a), and the availability of volunteers to participate in that program. The Secretary shall—

''(1) in consultation with the Secretary of State, conduct a survey, of a scope considered necessary by the Secretary, to determine what technical skills may be required within the independent states of the former Soviet Union and the degree of need for these skills;

''(2) determine the potential availability of former service members who are qualified in the required technical skills in a manner and of a duration considered necessary by the Secretary; and

''(3) maintain a registry of the skills and former service members who volunteer to participate during the study required in paragraphs (1) and (2).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1802 of this title.

§ 1802. Participants in program

(a) If the Secretary of Defense carries out a program under section 1801 of this title, the Secretary shall select the volunteers to participate in the program. Volunteers shall be selected from among individuals—

(1) who have retired from active duty or been released from active duty under a voluntary separation program; and

(2) who possess technical skills relevant to the infrastructure needs of the independent states of the former Soviet Union (as identified by the Secretary of State pursuant to section 1803(a) of this title), including skills in areas such as civil engineering, electrical engineering, nuclear plant safety, environmental cleanup, logistics, communications, and health care.

(b) Volunteers may be selected from among individuals who were separated from active duty after October 22, 1990.

(c)(1) The Secretary of Defense may employ volunteers, by contract, to provide services that use their technical skills for the benefit of governmental or nonprofit nongovernmental entities in any of the independent states of the former Soviet Union.

(2) A person who is employed as a volunteer under paragraph (1) shall be considered to be an employee for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of such employment as a volunteer.

(d) Volunteers may be required to agree to serve in an independent state of the former Soviet Union for a period of two years (in addition to such period of education and training provided under section 1803(c) of this title) except to the extent the Secretary of State determines otherwise.

(e) The Secretary of Defense shall prescribe procedures for the selection of volunteers, including procedures for the submission of applications.

(f) The Secretary of Defense may maintain a registry of applicants who are qualified to be volunteers, including the skills of such applicants.

(Added Pub. L. 102–484, div. A, title XIII, §1322(a)(1), Oct. 23, 1992, 106 Stat. 2551; amended Pub. L. 103–35, title II, §201(f)(3), (g)(3), May 31, 1993, 107 Stat. 99, 100.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–35, §201(g)(3), substituted ''carries'' for ''carrys'' in introductory provisions.

Subsec. (b). Pub. L. 103–35, §201(f)(3), substituted ''after October 22, 1990'' for ''not more than two years before the date of the enactment of this chapter''.

§1803. Determining needs for volunteers; role of the Secretary of State

(a) The Secretary of Defense, in consultation with the Secretary of State, may identify the technical skills that could be provided by volunteers pursuant to this chapter and identify opportunities for the placement of volunteers with governmental or nongovernmental entities in each participating country.

(b) The Secretary of State shall approve the functions to be performed by each volunteer assigned pursuant to this chapter and the assignment of each volunteer to an independent state of the former Soviet Union.

(c) The Secretary of State may provide volunteers with language training, cultural orientation, and such other education and training as the Secretary determines appropriate. Any expenses incurred by the Secretary of State in carrying out this subsection shall be reimbursed by the Secretary of Defense from amounts currently available to the Secretary of Defense.

(d) Each volunteer shall serve under the authority of the United States chief of mission to the participating country and shall be considered to be a member of the United States mission to that country.

(Added Pub. L. 102–484, div. A, title XIII, §1322(a)(1), Oct. 23, 1992, 106 Stat. 2552.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1802 of this title.

§1804. Compensation and benefits

(a) Each volunteer may be paid a stipend at the annual rate of $25,000, subject to the availability of appropriations.

(b) If the Secretary of Defense determines that it is necessary to do so in order to recruit qualified volunteers, the Secretary may provide volunteers with the allowances and other benefits considered appropriate by the Secretary, including the following:

(1) Round-trip transportation for the volunteer and the volunteer's dependents.

(2) Medical care for the volunteer and dependents, if the volunteer is not otherwise eligible for medical care from the Department of Defense or such medical care is otherwise not reasonably available.

(3) A housing allowance.

(4) An overseas cost-of-living allowance.

(5) Expenses of education of dependents.

(Added Pub. L. 102–484, div. A, title XIII, §1322(a)(1), Oct. 23, 1992, 106 Stat. 2553; amended Pub. L. 103–160, div. A, title XI, §1182(a)(4), Nov. 30, 1993, 107 Stat. 1771.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–160 substituted ''the volunteer's'' for ''his or her''.

§1805. Termination of program

The selection of volunteers to participate in the program under this chapter shall terminate on September 30, 1995.

(Added Pub. L. 102–484, div. A, title XIII, §1322(a)(1), Oct. 23, 1992, 106 Stat. 2553.)

PART III—TRAINING AND EDUCATION

Chap.		Sec.
101.	Training Generally	2001
102.	Junior Reserve Officers' Training Corps	2031
103.	Senior Reserve Officers' Training Corps	2101
104.	Uniformed Services University of the Health Sciences	2112
105.	Armed Forces Health Professions Financial Assistance Programs	2120
106.	Educational Assistance for Members of the Selected Reserve	2131
107.	Educational Assistance for Persons Enlisting for Active Duty	2141
108.	Department of Defense Schools	2161
109.	Educational Loan Repayment Programs	2171
110.	Educational Assistance for Members Held as Captives and Their Dependents	2181
111.	Support of Science, Mathematics, and Engineering Education	2191

AMENDMENTS

1991—Pub. L. 102–25, title VII, §701(e)(2), Apr. 6, 1991, 105 Stat. 114, inserted ''2161'' in item for chapter 108.

1990—Pub. L. 101–510, div. A, title II, §247(a)(2)(B), title IX, §911(b)(3), Nov. 5, 1990, 104 Stat. 1523, 1626, substituted ''Department of Defense Schools'' for ''Granting of Advanced Degrees at Department of Defense Schools'' in item for chapter 108 and ''Support of Science, Mathematics, and Engineering Education'' for ''National Defense Science and Engineering Graduate Fellowships'' in item for chapter 111.

1989—Pub. L. 101–189, div. A, title VIII, §843(d)(2), title XVI, §1622(d)(1), Nov. 29, 1989, 103 Stat. 1517, 1604, substituted ''TRAINING AND EDUCATION'' for ''TRAINING'' in heading for part III and added item for chapter 111.

1987—Pub. L. 100–180, div. A, title VII, §711(b), Dec. 4, 1987, 101 Stat. 1111, substituted ''Financial Assistance Programs'' for ''Scholarship Program'' in item for chapter 105.

1986—Pub. L. 99–399, title VIII, §806(d)(2), Aug. 27, 1986, 100 Stat. 888, added item for chapter 110.

1985—Pub. L. 99–145, title VI, §671(a)(2), Nov. 8, 1985, 99 Stat. 663, added item for chapter 109.

1984—Pub. L. 98–525, title VII, §705(a)(2), Oct. 19, 1984, 98 Stat. 2567, substituted ''Members of the Selected Reserve'' for ''Enlisted Members of the Selected Reserve of the Ready Reserve'' in item for chapter 106.

1980—Pub. L. 96–513, title V, §511(99), Dec. 12, 1980, 94 Stat. 2929, capitalized ''Assistance'', ''Persons'', ''Enlisting'', ''Active'', and ''Duty'' in item for chapter 107.

Pub. L. 96–450, title IV, §406(b), Oct. 14, 1980, 94 Stat. 1981, added item for chapter 108.

Pub. L. 96–342, title IX, §901(b), Sept. 8, 1980, 94 Stat. 1114, added item for chapter 107.

1977—Pub. L. 95–79, title IV, §402(b), July 30, 1977, 91 Stat. 330, added item for chapter 106.

1972—Pub. L. 92–426, §2(b), Sept. 21, 1972, 86 Stat. 719, added items for chapters 104 and 105.

1964—Pub. L. 88–647, title I, §101(2), title II, §201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added items for chapters 102 and 103.

CHAPTER 101—TRAINING GENERALLY

Sec.
[2001. Repealed.]
2002. Dependents of members of armed forces: language training.
2003. Aeronautical rating as pilot: qualifications.
2004. Detail of commissioned officers as students at law schools.
2005. Advanced education assistance: active duty agreement; reimbursement requirements.
2006. Department of Defense Education Benefits Fund.
2007. Payment of tuition for off-duty training or education.
2008. Authority to use funds for certain educational purposes.
2009. Military colleges: female students.
2010. Participation of developing countries in combined exercises: payment of incremental expenses.
2011. Special operations forces: training with friendly foreign forces.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(12), Oct. 5, 1994, 108 Stat. 3014, struck out item 2001 ''Reserve components''.

1991—Pub. L. 102–190, div. A, title X, § 1052(a)(2), Dec. 5, 1991, 105 Stat. 1471, added item 2011.

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(3)(B), (4)(B), Nov. 5, 1990, 104 Stat. 1718, struck out ''of the military departments'' after ''officers'' in item 2004 and substituted ''Payment'' for ''Limitation on payment'' in item 2007.

1986—Pub. L. 99–661, div. A, title XIII, § 1321(a)(2), Nov. 14, 1986, 100 Stat. 3988, added item 2010.

1984—Pub. L. 98–525, title VII, § 706(a)(2), title XIV, §§ 1401(g)(2), 1405(31), Oct. 19, 1984, 98 Stat. 2570, 2619, 2624, substituted a colon for a semicolon in item 2003 and added items 2006 to 2009.

1980—Pub. L. 96–357, § 2(b), Sept. 24, 1980, 94 Stat. 1182, added item 2005.

1973—Pub. L. 93–155, title VIII, § 817(b), Nov. 16, 1973, 87 Stat. 622, added item 2004.

1971—Pub. L. 92–168, § 4(2), Nov. 24, 1971, 85 Stat. 489, added item 2003.

1970—Pub. L. 91–278, § 2(3), June 12, 1970, 84 Stat. 306, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' in item 2002.

1965—Pub. L. 89–160, § 1(2), Sept. 1, 1965, 79 Stat. 615, added item 2002.

CROSS REFERENCES

Particular provisions relating to—
Air Force, see section 9301 et seq. of this title.
Army, see section 4301 et seq. of this title.

[§ 2001. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, related to division of reserve components into training categories. See section 10141(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 2002. Dependents of members of armed forces: language training

(a) Notwithstanding section 701(b) of the Foreign Service Act of 1980 (22 U.S.C. 4021(b)) or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation, language training may be provided in—

(1) a facility of the Department of Defense;

(2) a facility of the Foreign Service Institute established under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4021(a)); or

(3) a civilian educational institution;

to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.

(b) In this section, the term ''dependent'' has the same meaning that it has under section 401 of title 37.

(Added Pub. L. 89–160, § 1(1), Sept. 1, 1965, 79 Stat. 615; amended Pub. L. 91–278, § 2(1), (2), June 12, 1970, 84 Stat. 306; Pub. L. 96–465, title II, § 2206(c)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–22, § 11(a)(7), July 10, 1981, 95 Stat. 138; Pub. L. 98–525, title XIV, § 1405(30), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''In this section,'' for ''For the purposes of this section, the word''.

1981—Subsec. (a). Pub. L. 97–22 inserted ''(22 U.S.C. 4021(b))'' after ''section 701(b) of the Foreign Service Act of 1980'' in provisions preceding par. (1) and, in par. (2), inserted ''(22 U.S.C. 4021(a))'' after ''section 701(a) of the Foreign Service Act of 1980''.

1980—Subsec. (a). Pub. L. 96–465, in provisions preceding par. (1) substituted ''section 701(b) of the Foreign Service Act of 1980'' for ''section 1041 of title 22'' and in par. (2) substituted ''section 701(a) of the Foreign Service Act of 1980'' for ''section 1041 of title 22''.

1970—Pub. L. 91–278, § 2(1), substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 91–278, § 2(2)(A), authorized Secretary of Transportation to prescribe regulations for Coast Guard when not operating as a service in the Navy.

Subsec. (a)(3). Pub. L. 91–278, § 2(2)(B), substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

§ 2003. Aeronautical rating as pilot: qualifications

To be eligible to receive an aeronautical rating as a pilot in the Army or Air Force or be designated as a naval aviator, a member of an armed force must successfully complete an undergraduate pilot course of instruction prescribed or approved by the Secretary of his military department.

(Added Pub. L. 92–168, §4(1), Nov. 24, 1971, 85 Stat. 489.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6913 of this title; title 14 section 373.

§2004. Detail of commissioned officers as students at law schools

(a) The Secretary of each military department may, under regulations prescribed by the Secretary of Defense, detail commissioned officers of the armed forces as students at accredited law schools, located in the United States, for a period of training leading to the degree of bachelor of laws or juris doctor. No more than twenty-five officers from each military department may commence such training in any single fiscal year.

(b) To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must—

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O–3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational course of legal training;

(B) accept transfer or detail as a judge advocate or law specialist within the department concerned when his legal training is completed; and

(C) agree to serve on active duty following completion or other termination of training for a period of two years for each year or part thereof of his legal training under subsection (a).

(c) Officers detailed for legal training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense. Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by any such officer under any other provision of law or agreement.

(d) Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(e) An officer who, under regulations prescribed by the Secretary of Defense, is dropped from the program of legal training authorized by subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by regulations issued by the Secretary of Defense, except that in no case shall any such member be required to serve on active duty for any period in excess of one year for each year or part thereof he participated in the program.

(f) No agreement detailing any officer of the armed forces to an accredited law school may be entered into during any period that the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

(Added Pub. L. 93–155, title VIII, §817(a), Nov. 16, 1973, 87 Stat. 621; amended Pub. L. 101–510, div. A, title XIV, §1484(i)(3)(A), Nov. 5, 1990, 104 Stat. 1718.)

AMENDMENTS

1990—Pub. L. 101–510 struck out ''of the military departments'' after ''officers'' in section catchline.

SELECTION OF OFFICERS IN MISSING STATUS FOR LEGAL TRAINING ON A NONCOMPETITIVE BASIS; EXEMPTION FROM NUMERICAL LIMITATIONS

Pub. L. 94–106, title VIII, §821, Oct. 7, 1975, 89 Stat. 545, provided that: ''Notwithstanding any provision of section 2004 of title 10 United States Code, an officer in any pay grade who was in a missing status (as defined in section 551(2) of title 37, United States Code) after August 4, 1964, and before May 8, 1975, may be selected for detail for legal training under that section 2004 on other than a competitive basis and, if selected for that training, is not counted in computing, for the purpose of subsection (a) of that section 2004, the number of officers who may commence that training in any single fiscal year. For the purposes of determining eligibility under that section 2004, the period of time during which an officer was in that missing status may be disregarded in computing the period he has served on active duty.''

§2005. Advanced education assistance: active duty agreement; reimbursement requirements

(a) The Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree—

(1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement;

(2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement;

(3) that if such person, voluntarily or because of misconduct, fails to complete the period of active duty specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4), such person will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided such person as the unserved portion of active duty bears to the total period of active duty such person agreed to serve; and

(4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

(b) The Secretary concerned shall determine the period of active duty to be served by any person for advanced education assistance to be provided such person by an armed force, except that if the period of active duty required to be served is specified under another provision of law with respect to the advanced education as-

sistance to be provided, the period specified in the agreement referred to in subsection (a) shall be the same as the period specified in such other provision of law.

(c) Subject to the provisions of subsection (d), the obligation to reimburse the United States under an agreement described in subsection (a) is, for all purposes, a debt owing the United States.

(d) A discharge in bankruptcy under title 11 shall not release a person from an obligation to reimburse the United States required under the terms of an agreement described in subsection (a) if the final decree of the discharge in bankruptcy was issued within a period of five years after the last day of a period which such person had agreed to serve on active duty. This subsection applies to a discharge in bankruptcy in any proceeding which begins after September 30, 1978.

(e) In this section:

(1) The term ''advanced education'' means education or training above the secondary school level but does not include technical training provided to a member of the armed forces to qualify such member to perform a specified military function, to workshops, or to short-term training programs.

(2) The term ''assistance'' means the direct provision of any course of advanced education by the Secretary concerned, reimbursement by the Secretary concerned for any course of advanced education provided by another department or agency of the Federal Government, or the payment, in whole or in part, by the Secretary concerned for any course of advanced education provided by any public or private educational institution or other entity, but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.

(3) The term ''cost of advanced education'' means those costs which are, under regulations prescribed by the Secretary concerned, directly attributable to the education of the person to whom a course of advanced education is provided, including the cost of tuition and other fees (or, if none is charged, an amount determined by the Secretary concerned to be a reasonable charge for the education provided), the cost of books, supplies, transportation, and miscellaneous expenses, and the cost of room and board, but such term does not include pay or allowances under title 37 or a stipend under section 2121 of this title.

(f) The Secretary concerned shall require, as a condition to the Secretary providing financial assistance under section 2107 or 2107a of this title to any person, that such person enter into an agreement described in subsection (a). In addition to the requirements of clauses (1) through (4) of such subsection, any agreement required by this subsection shall provide—

(1) that if such person fails to complete the education requirements specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4) of such subsection, the Secretary will have the option to order such person to reimburse the United States in the manner provided for in clause (3) of such subsection without the Secretary first ordering such person to active duty as provided for under clause (2) of such subsection and sections 2107(f) and 2107a(f) of this title; and

(2) that any amount owed by such person to the United States under such agreement shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of ninety days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a reimbursement under this section.

(g)(1) In any case in which the Secretary concerned determines that a person who entered into an agreement under this section failed to complete the period of active duty specified in the agreement (or failed to fulfill any other term or condition prescribed in the agreement) and, by reason of the provision of the agreement required under subsection (a)(3), may owe a debt to the United States and in which that person disputes that such a debt is owed, the Secretary shall designate a member of the armed forces or a civilian employee under the jurisdiction of the Secretary to investigate the facts of the case and hear evidence presented by the person who may owe the debt and other parties, as appropriate, in order to determine the validity of the debt. That official shall report the official's findings and recommendations to the Secretary concerned. If the justification for the debt investigated includes an allegation of misconduct, the investigating official shall state in the report the official's assessment as to whether the individual behavior that resulted in the separation of the person who may owe the debt qualifies as misconduct under subsection (a)(3).

(2) The Secretary of each military department shall ensure that a member of the armed forces who may be subject to a reimbursement requirement under this section is advised of such requirement before (1) submitting a request for voluntary separation, or (2) making a decision on a course of action regarding personal involvement in administrative, nonjudicial, and judicial action resulting from alleged misconduct.

(h) The Secretary concerned may, at any time before October 1, 1998, modify an agreement described in subsection (a) to reduce the active duty service obligation specified in the agreement if the Secretary determines that it is in the best interests of the United States to do so. In such a case, the Secretary shall reduce the amount required to be reimbursed to the United States proportionately with the reduction in the period of obligated active duty service.

(Added Pub. L. 96–357, § 2(a), Sept. 24, 1980, 94 Stat. 1180; amended Pub. L. 98–94, title X, § 1003(b)(1), title XII, § 1268(10), Sept. 24, 1983, 97 Stat. 656, 706; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title V, § 534, Nov. 5, 1990, 104 Stat. 1564; Pub. L. 103–160, div. A, title V, § 573(a), Nov. 30, 1993, 107 Stat. 1673.)

AMENDMENTS

1993—Subsecs. (g), (h). Pub. L. 103–160 added subsecs. (g) and (h).

1990—Subsec. (a)(3). Pub. L. 101–510, §534(1), inserted ''or fails to fulfill any term or condition prescribed pursuant to clause (4),'' after ''agreement,''.

Subsec. (f)(1). Pub. L. 101–510, §534(2), inserted ''or fails to fulfill any term or condition prescribed pursuant to clause (4) of such subsection,'' after ''agreement,''.

1987—Subsec. (e). Pub. L. 100–180, §1231(17), inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1983—Subsec. (c). Pub. L. 98–94, §1268(10)(A), struck out ''of this section'' after ''subsection (d)'' and ''subsection (a)''.

Subsec. (d). Pub. L. 98–94, §1268(10)(A), struck out ''of this section'' after ''subsection (a)''.

Subsec. (e). Pub. L. 98–94, §1268(10)(B), substituted a colon for a dash after ''In this section'' preceding par. (1).

Subsec. (f). Pub. L. 98–94, §1003(b)(1), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 573(b) of Pub. L. 103–160 provided that:

''(1) Subsection (g) of section 2005 of title 10, United States Code, as added by subsection (a), shall apply with respect to persons separated from the Armed Forces after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 30, 1993].

''(2) Subsection (h) of such section, as added by subsection (a), shall apply with respect to persons separated from the Armed Forces after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1003(b)(2) of Pub. L. 98–94 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to agreements entered into after September 30, 1983.''

§2006. Department of Defense Education Benefits Fund

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Education Benefits Fund (hereinafter in this section referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance Department of Defense education liabilities on an actuarially sound basis.

(b) In this section:

(1) The term ''Department of Defense education liabilities'' means liabilities of the Department of Defense for benefits under chapter 30 of title 38 and for benefits under chapter 106 of this title.

(2) The term ''normal cost'', with respect to any period of time, means the total of the following:

(A) The present value of the future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized under section 3015(d) of title 38 to persons who were not on active duty on July 1, 1985, and who during such period enter on active duty.

(B) The present value of the future benefits payable from the Fund for amounts attributable to educational assistance authorized under subchapter III of chapter 30 of title 38 to persons who were not on active duty on July 1, 1985, and who during such period—

(i) enter a fourth year of active duty, in the case of persons eligible for basic educational assistance under section 3011 of such title; or

(ii) enter a period of service that will establish entitlement to such educational assistance under section 3021(b) of such title, in the case of persons eligible for basic educational assistance under section 1412[1] of such title.

(C) The present value of the future benefits payable from the Fund for educational assistance under chapter 106 of this title to persons who during such period become entitled to such assistance.

(c) There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund by the Secretary of Defense under subsection (g).

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(d) The Secretary of the Treasury shall transfer from the Fund to the Secretary of Veterans Affairs such amounts as may be necessary to enable the Secretary of Veterans Affairs to make required payments of Department of Defense education liabilities. The Secretary of the Treasury, the Secretary of Defense, and the Secretary of Veterans Affairs shall enter into an agreement as to how and when, and the amounts in which, such transfers shall be made. Except for investments under subsection (h), amounts in the Fund may not be used for any purpose other than transfers as described in this subsection.

(e)(1)(A) There is established in the Department of Defense a Department of Defense Education Benefits Board of Actuaries (hereinafter in this section referred to as the ''Board''). The Board shall consist of three members, who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve for a term of fifteen years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(ii) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(C) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in

[1] See References in Text note below.

the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(2) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(3) The Board shall review valuations of the Fund under subsection (f) and shall recommend to the President and Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(4) The Secretary shall keep, or cause to be kept, such records as necessary for determining the actuarial status of the Fund.

(f)(1) The Secretary of Defense shall carry out periodic actuarial valuations of the educational programs described in subsection (b)(1).

(2) Based on the most recent such valuation, the Secretary of Defense shall estimate the normal cost for the next fiscal year.

(3) If at the time of any such valuation there has been a change in benefits under an education program described in subsection (b)(1) that has been made since the last such valuation and that increases or decreases the present value of benefits payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the liquidation of the unfunded liability (or negative unfunded liability) thus created such that the present value of the sum of the amortization payments equals the increase or decrease in the present value of such benefits.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the liquidation of such gain or loss through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Based on the determinations under paragraphs (2), (3), and (4) the Secretary of Defense shall determine the amount needed to be appropriated to the Department of Defense for the next fiscal year for payments to be made to the Fund under subsection (g). The President shall include not less than the full amount so determined in the budget transmitted to Congress for the next fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(6) All determinations under this subsection shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(g)(1) The Secretary of Defense shall pay into the Fund each month the amount that, based upon the most recent actuarial valuation of the education programs described in subsection (b)(1), is equal to the actual total normal cost for the preceding month.

(2) The Secretary of Defense shall pay into the Fund at the beginning of each fiscal year (or as soon thereafter as appropriations are available for such purpose) the sum of the following:

(A) The amount of the payment for that year, if any, for the amortization of any liability to the Fund resulting from a change in benefits, as determined by the Secretary of Defense under subsection (f)(3).

(B) The amount of the payment for that year, if any, for the amortization of any actuarial gain or loss to the Fund, as determined by the Secretary of Defense under subsection (f)(4).

(3) Amounts paid into the Fund under this subsection shall be paid from appropriations available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(h) The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–525, title VII, § 706(a)(1), Oct. 19, 1984, 98 Stat. 2568; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), (6), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 101–510, div. A, title XIII, § 1322(a)(2), title XIV, § 1484(j)(2), Nov. 5, 1990, 104 Stat. 1671, 1718; Pub. L. 103–337, div. A, title X, § 1070(e)(6), Oct. 5, 1994, 108 Stat. 2859.)

REFERENCES IN TEXT

Section 1412 of title 38, referred to in subsec. (b)(2)(B)(ii), was redesignated section 3012 by Pub. L. 102–83, § 5(a), Aug. 6, 1991, 105 Stat. 406.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–337 substituted ''section 3015(d)'', ''section 3011'', and ''section 3021(b)'' for ''section 1415(c)'', ''section 1411'', and ''section 1421(b)'', respectively.

1990—Subsec. (d). Pub. L. 101–510, § 1484(j)(2), substituted ''enable the Secretary of Veterans Affairs'' for ''enable the Administrator''.

Subsec. (e)(3). Pub. L. 101–510, § 1322(a)(2), substituted ''and shall recommend to the President and Congress'' for ''and report periodically, not less than once every four years, to the President and Congress on the status of the Fund and shall recommend''.

1989—Subsec. (d). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in first sentence and ''Secretary of Veterans Affairs'' for ''Administrator'' in second sentence.

1987—Subsec. (b). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''normal'' for ''Normal'' in par. (2).

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

FIRST PAYMENT INTO FUND

Section 706(b) of Pub. L. 98–525 directed that first payment into Department of Defense Education Bene-

fits Fund under this section be made not later than three months after Board of Actuaries determined amounts needed to be paid into Fund for that portion of fiscal year 1985 beginning on July 1, 1985, with first payment in a lump sum equal to total of amounts that would have been paid to Fund each month between July 1, 1985, and time such first payment was made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 227 of this title; title 38 section 3035.

§2007. Payment of tuition for off-duty training or education

(a) The Secretary of a military department may not pay more than 75 percent of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such institution for education or training during his off-duty periods, except that—

(1) in the case of an enlisted member in the pay grade of E–5 or higher with less than 14 years' service, not more than 90 percent of the charges may be paid;

(2) in the case of a member enrolled in a high school completion program, all of the charges may be paid; and

(3) in the case of a commissioned officer on active duty, no part of the charges may be paid unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education.

(b) The limitation in subsection (a) does not apply to the Program for Afloat College Education.

(c)(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay not more than 75 percent of the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer in a program leading to a baccalaureate degree.

(2) The Secretary may not pay charges under paragraph (1) for tuition or expenses of an officer unless the officer agrees to remain a member of the Selected Reserve for at least four years after completion of the education or training for which the charges are paid.

(3) The Secretary may not pay charges under paragraph (1)—

(A) for a warrant officer; or

(B) for an officer on active duty or full-time National Guard duty.

(d) Subsection (c)(3) may not be construed to prohibit the Secretary of a military department from exercising any authority that the Secretary may have to pay charges of an educational institution (within the limits set forth in subsection (a)) in the case of—

(1) a warrant officer on active duty or full-time National Guard duty;

(2) a commissioned officer on full-time National Guard duty; or

(3) a commissioned officer on active duty who satisfies the condition in subsection (a)(3) relating to an agreement to remain on active duty.

(Added Pub. L. 98–525, title XIV, §1401(g)(1), Oct. 19, 1984, 98 Stat. 2618; amended Pub. L. 99–661, div. A, title VI, §651(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §3(4), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, div. A, title XIV, §1484(i)(4)(A), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VI, §632, Nov. 30, 1993, 107 Stat. 1684.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8017], 98 Stat. 1904, 1926.

Dec. 8, 1983, Pub. L. 98–212, title VII, §720, 97 Stat. 1441.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §721], 96 Stat. 1833, 1854.

Dec. 29, 1981, Pub. L. 97–114, title VII, §721, 95 Stat. 1582.

Dec. 15, 1980, Pub. L. 96–527, title VII, §722, 94 Stat. 3084.

Dec. 21, 1979, Pub. L. 96–154, title VII, §722, 93 Stat. 1156.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §822, 92 Stat. 1247.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §821, 91 Stat. 903.

Sept. 22, 1976, Pub. L. 94–419, title VII, §721, 90 Stat. 1295.

Feb. 9, 1976, Pub. L. 94–212, title VII, §721, 90 Stat. 172.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §821, 88 Stat. 1228.

Jan. 2, 1974, Pub. L. 93–238, title VII, §722, 87 Stat. 1042.

Oct. 26, 1972, Pub. L. 92–570, title VII, §722, 86 Stat. 1200.

Dec. 18, 1971, Pub. L. 92–204, title VII, §722, 85 Stat. 731.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §822, 84 Stat. 2034.

Dec. 29, 1969, Pub. L. 91–171, title VI, §622, 83 Stat. 483.

Oct. 17, 1968, Pub. L. 90–580, title V, §521, 82 Stat. 1133.

Sept. 29, 1967, Pub. L. 90–96, title VI, §621, 81 Stat. 246.

Oct. 15, 1966, Pub. L. 89–687, title VI, §621, 80 Stat. 995.

Sept. 29, 1965, Pub. L. 89–213, title VI, §621, 79 Stat. 877.

Aug. 19, 1964, Pub. L. 88–446, title V, §521, 78 Stat. 478.

Oct. 17, 1963, Pub. L. 88–149, title V, §521, 77 Stat. 267.

Aug. 9, 1962, Pub. L. 87–577, title V, §521, 76 Stat. 332.

Aug. 17, 1961, Pub. L. 87–144, title VI, §621, 75 Stat. 379.

July 7, 1960, Pub. L. 86–601, title V, §521, 74 Stat. 353.

Aug. 18, 1959, Pub. L. 86–166, title V, §621, 73 Stat. 382.

Aug. 22, 1958, Pub. L. 85–724, title VI, §623, 72 Stat. 727.

Aug. 2, 1957, Pub. L. 85–117, title VI, §624, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, §624, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, §628, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, §730, 68 Stat. 355.

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

1990—Pub. L. 101–510 substituted ''Payment'' for ''Limitation on payment'' in section catchline.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661, §651(a)(2). See 1986 Amendment note below.

1986—Subsec. (a)(3). Pub. L. 99–661, §651(a)(1), inserted ''on active duty''.

Subsec. (c). Pub. L. 99–661, §651(a)(2), as amended by Pub. L. 100–26, added subsec. (c).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 651(c) of Pub. L. 99–661 provided that: ''Subsection (c) of section 2007 of title 10, United States

Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2008. Authority to use funds for certain educational purposes

Funds appropriated to the Department of Defense may be used to carry out section 10 of the Act of September 23, 1950 (20 U.S.C. 640), relating to impact aid authorization.

(Added Pub. L. 98–525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2618.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], Oct. 12, 1984, 98 Stat. 1904, 1923.

Pub. L. 98–212, title VII, § 709, Dec. 8, 1983, 97 Stat. 1439.

Pub. L. 97–377, title I, § 101(c) [title VII, § 709], Dec. 21, 1982, 96 Stat. 1833, 1851.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2009. Military colleges: female students

(a) Under regulations prescribed by the Secretary of Defense, any college or university designated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university.

(b) Regulations prescribed under subsection (a) may not require a college or university, as a condition of maintaining its designation as a military college or for any other purpose, to require female undergraduate students enrolled in such college or university to participate in military training.

(Added Pub. L. 98–525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2619.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 95–485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, which was set out as a note under section 2102 of this title, prior to repeal by Pub. L. 98–525, §§ 1403(b), 1404.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2010. Participation of developing countries in combined exercises: payment of incremental expenses

(a) The Secretary of Defense, after consultation with the Secretary of State, may pay the incremental expenses of a developing country that are incurred by that country as the direct result of participation in a bilateral or multilateral military exercise if—

(1) the exercise is undertaken primarily to enhance the security interests of the United States; and

(2) the Secretary of Defense determines that the participation by such country is necessary to the achievement of the fundamental objectives of the exercise and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country.

(b) The Secretary of Defense shall submit to Congress a report each year, not later than March 1, containing—

(1) a list of the developing countries for which expenses have been paid by the United States under this section during the preceding year; and

(2) the amounts expended on behalf of each government.

(c) The Secretary of Defense shall establish by regulation such accounting procedures as may be necessary to ensure that funds expended under this section are properly expended.

(d) In this section, the term ''incremental expenses'' means the reasonable and proper cost of the goods and services that are consumed by a developing country as a direct result of that country's participation in a bilateral or multilateral military exercise with the United States, including rations, fuel, training ammunition, and transportation. Such term does not include pay, allowances, and other normal costs of such country's personnel.

(e) Not more than $13,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.

(Added Pub. L. 99–661, div. A, title XIII, § 1321(a)(1), Nov. 14, 1986, 100 Stat. 3988.)

§ 2011. Special operations forces: training with friendly foreign forces

(a) AUTHORITY TO PAY TRAINING EXPENSES.—Under regulations prescribed pursuant to subsection (c), the commander of the special operations command established pursuant to section 167 of this title and the commander of any other unified or specified combatant command may pay, or authorize payment for, any of the following expenses:

(1) Expenses of training special operations forces assigned to that command in conjunction with training, and training with, armed forces and other security forces of a friendly foreign country.

(2) Expenses of deploying such special operations forces for that training.

(3) In the case of training in conjunction with a friendly developing country, the incremental expenses incurred by that country as the direct result of such training.

(b) PURPOSE OF TRAINING.—The primary purpose of the training for which payment may be made under subsection (a) shall be to train the special operations forces of the combatant command.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall establish accounting procedures to ensure that the

expenditures pursuant to this section are appropriate.

(d) DEFINITIONS.—In this section:

(1) The term ''special operations forces'' includes civil affairs forces and psychological operations forces.

(2) The term ''incremental expenses'', with respect to a developing country, means the reasonable and proper cost of rations, fuel, training ammunition, transportation, and other goods and services consumed by such country, except that the term does not include pay, allowances, and other normal costs of such country's personnel.

(e) REPORTS.—Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report regarding training during the preceding fiscal year for which expenses were paid under this section. Each report shall specify the following:

(1) All countries in which that training was conducted.

(2) The type of training conducted, including whether such training was related to counter-narcotics or counter-terrorism activities, the duration of that training, the number of members of the armed forces involved, and expenses paid.

(3) The extent of participation by foreign military forces, including the number and service affiliation of foreign military personnel involved and physical and financial contribution of each host nation to the training effort.

(4) The relationship of that training to other overseas training programs conducted by the armed forces, such as military exercise programs sponsored by the Joint Chiefs of Staff, military exercise programs sponsored by a combatant command, and military training activities sponsored by a military department (including deployments for training, short duration exercises, and other similar unit training events).

(Added Pub. L. 102–190, div. A, title X, §1052(a)(1), Dec. 5, 1991, 105 Stat. 1470.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 166 of this title.

CHAPTER 102—JUNIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2031. Junior Reserve Officers' Training Corps.

AMENDMENTS

1964—Pub. L. 88–647, title I, §101(1), Oct. 13, 1964, 78 Stat. 1063, added item 2031 and chapter heading.

§2031. Junior Reserve Officers' Training Corps

(a)(1) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. The total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 3,500. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(2) It is a purpose of the Junior Reserve Officers' Training Corps to instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.

(b) No unit may be established or maintained at an institution unless—

(1) the number of physically fit students in such unit who are in a grade above the 8th grade and are citizens or nationals of the United States, or aliens lawfully admitted to the United States for permanent residence, is not less than (A) 10 percent of the number of students enrolled in the institution who are in a grade above the 8th grade, or (B) 100, whichever is less;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve Officers' Training Corps program—

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1), the Secretary of the military department concerned may authorize qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers, and

members of the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) A retired member so employed is entitled to receive the member's retired or retainer pay without reduction by reason of any additional amount paid to the member by the institution concerned. In the case of payment of any such additional amount by the institution concerned, the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount paid to the retired member by the institution for any period, up to a maximum of one-half of the difference between the member's retired or retainer pay for that period and the active duty pay and allowances which the member would have received for that period if on active duty. Notwithstanding the limitation in the preceding sentence, the Secretary concerned may pay to the institution more than one-half of the additional amount paid to the retired member by the institution if (as determined by the Secretary) the institution is in an educationally and economically deprived area and the Secretary determines that such action is in the national interest. Payments by the Secretary concerned under this paragraph shall be made from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(Added Pub. L. 88–647, title I, § 101(1), Oct. 13, 1964, 78 Stat. 1063; amended Pub. L. 89–718, § 16, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, § 3(4), Sept. 11, 1967, 81 Stat. 220; Pub. L. 93–165, Nov. 29, 1973, 87 Stat. 660; Pub. L. 94–361, title VIII, § 807, July 14, 1976, 90 Stat. 933; Pub. L. 95–358, Sept. 8, 1978, 92 Stat. 592; Pub. L. 98–525, title IV, § 422, title XIV, § 1405(32), Oct. 19, 1984, 98 Stat. 2520, 2624; Pub. L. 100–26, § 7(i)(3), Apr. 21, 1987, 101 Stat. 282; Pub. L. 102–484, div. A, title V, § 533(a)–(e)(1), Oct. 23, 1992, 106 Stat. 2411, 2412; Pub. L. 103–160, div. A, title XI, § 1182(g)(1), Nov. 30, 1993, 107 Stat. 1774.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''The'' for ''Not more than 200 units may be established by all of the military departments each year, and the'' in second sentence.

1992—Subsec. (a). Pub. L. 102–484, § 533(a), (b), designated existing provisions as par. (1), substituted ''3,500'' for ''1,600'', and added par. (2).

Subsec. (b)(1). Pub. L. 102–484, § 533(c), substituted ''in a grade above the 8th grade'' for ''at least 14 years of age'' in two places and inserted '', or aliens lawfully admitted to the United States for permanent residence,'' after ''of the United States''.

Subsec. (c)(2). Pub. L. 102–484, § 533(d), inserted before semicolon ''and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program''.

Subsec. (d)(1). Pub. L. 102–484, § 533(e)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Retired members so employed are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between their retired pay and the active duty pay and allowances which they would receive if ordered to active duty, and one-half of that additional amount shall be paid to the institution concerned by the Secretary of the military department concerned from funds appropriated for that purpose.''

1987—Subsec. (a). Pub. L. 100–26 struck out ''beginning with the calendar year 1966'' after ''each year'' in second sentence.

1984—Subsec. (a). Pub. L. 98–525, § 1405(32), substituted ''October 13, 1964'' for ''the date of enactment of this section''.

Subsec. (b)(1). Pub. L. 98–525, § 422(1), substituted ''the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the institution who are at least 14 years of age, or (B) 100, whichever is less'' for ''the unit contains at least 100 physically fit students who are at least 14 years of age and are citizens or nationals of the United States''.

Subsec. (b)(5). Pub. L. 98–525, § 422(2)–(4), added par. (5).

1978—Subsec. (b)(1). Pub. L. 95–358 inserted ''or nationals'' after ''citizens''.

1976—Subsec. (a). Pub. L. 94–361 increased total number of units authorized to be established to 1,600 from 1,200 and limited the military institutes to establishment and maintenance of only one unit.

1973—Subsec. (b)(1). Pub. L. 93–165 substituted ''physically fit students'' for ''physically fit male students''.

1967—Subsecs. (c), (d). Pub. L. 90–83 substituted ''officers and noncommissioned officers'' for ''noncommissioned and commissioned officers'' wherever appearing.

1966—Subsec. (d). Pub. L. 89–718 capitalized first letter of first word in cls. (1) and (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 533(e)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to payments for periods of instructor service performed after September 30, 1992.''

SHORT TITLE

Section 1 of Pub. L. 88–647 provided: ''That the Act [enacting this chapter, and chapter 103 of this title, amending section 802 of former Title 5, sections 1475, 1478, 1481, 3201, 4348, 5404, 5504, 5652b, 6023, 6387, 6959, 8201, and 9348 of this title, and sections 205, 209, 415, 416 and 422 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 3355, 3540, 4381 to 4387, 6901 to 6906, 6908, 6910, 8355, 8540, and 9381 to 9387 of this title, and enacting provisions set out as notes under this section and section 2107 and former section 9385 of this title, may be cited as the ''Reserve Officers' Training Corps Vitalization Act of 1964.''

REDUCTION IN NUMBER OF STUDENTS REQUIRED TO BE IN JUNIOR RESERVE OFFICERS' TRAINING CORPS UNITS FOR PERIOD OF SEPTEMBER 1, 1980, TO AUGUST 31, 1984

Pub. L. 96–342, title VI, § 602, Sept. 8, 1980, 94 Stat. 1087, as amended by Pub. L. 97–86, title VII, § 702(a), Dec. 1, 1981, 95 Stat. 1111; Pub. L. 97–252, title VII, § 702, Sept. 8, 1982, 96 Stat. 728; Pub. L. 98–94, title VII, § 702, Sept. 24, 1983, 97 Stat. 634, provided that: ''Notwithstanding the provisions of section 2031(b) of title 10, United States Code, relating to the establishment and maintenance of units of the Junior Reserve Officers' Training Corps, during the period beginning on September 1, 1980, and ending on August 31, 1984, the Secretary of any military department may maintain a unit of the Junior Reserve Officers' Training Corps at any public or private secondary educational institution if—

''(1) the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the

institution who are at least 14 years of age, or (B) 100, whichever is less; and

''(2) the unit meets such other requirements (in addition to the requirements prescribed by section 2031(b) of title 10, United States Code) as may be established by the Secretary of the military department concerned.''

[Section 702(b) of Pub. L. 97–86 provided that: ''The amendment made by subsection (a) [substituting 1982 for 1981 above] shall take effect as of August 31, 1981.'']

SAVINGS CLAUSE

Section 402 of Pub. L. 88–647 provided that: ''If a part of this Act [see Short Title note above] is invalid, all valid parts that are severable from the invalid part remains in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.''

ISSUANCE OF REGULATIONS

Section 102 of Pub. L. 88–647 directed that regulations implementing subsec. (a) of this section be issued by President and by Secretary of each military department not later than Jan. 1, 1966.

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2101. Definitions.
2102. Establishment.
2103. Eligibility for membership.
2104. Advanced training; eligibility for.
2105. Advanced training; failure to complete or to accept commission.
2106. Advanced training; commission on completion.
2107. Financial assistance program for specially selected members.
2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard.
2108. Advanced standing; interruption of training; delay in starting obligated service; release from program.
2109. Practical military training.
2110. Logistical support.
2111. Personnel: administrators and instructors.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title V, §522(b)(2), Dec. 5, 1991, 105 Stat. 1362, substituted ''Army Reserve and Army National Guard'' for ''military junior colleges'' in item 2107a.

1988—Pub. L. 100–456, div. A, title VI, §633(a)(3)(B), Sept. 29, 1988, 102 Stat. 1986, substituted ''Practical military training'' for ''Field training; practice cruises'' in item 2109.

1980—Pub. L. 96–357, §1(c)(2), Sept. 24, 1980, 94 Stat. 1180, added item 2107a.

1964—Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1064, added chapter heading and items 2101 to 2111.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8140; title 37 section 209.

§2101. Definitions

In this chapter:

(1) The term ''program'' means the Senior Reserve Officers' Training Corps of an armed force.

(2) The term ''member of the program'' means a student who is enrolled in the Senior Reserve Officers' Training Corps of an armed force.

(3) The term ''advanced training'' means the training and instruction offered in the Senior Reserve Officers' Training Corps to students in the third and fourth years of a four-year Senior Reserve Officers' Training Corps course, or the equivalent period of training in an approved two-year Senior Reserve Officers' Training Corps course (except that, in the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, such term includes a fifth academic year or a combination of a part of a fifth academic year and summer sessions).

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1064; amended Pub. L. 98–94, title X, §1003(a)(1), title XII, §1268(11), Sept. 24, 1983, 97 Stat. 656, 706; Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Pub. L. 100–180, in pars. (1) to (3), inserted ''The term'' after each par. designation, and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1983—Pub. L. 98–94, §1268(11)(A), substituted a colon for a dash after ''In this chapter'' in provision preceding par. (1).

Par. (1). Pub. L. 98–94, §1268(11)(B), (C), substituted ''Program'' for ''program'' and a period for a semicolon after ''armed force''.

Par. (2). Pub. L. 98–94, §1268(11)(D), (E), substituted ''Member'' for ''member'', and a period for ''; and'' after ''armed force''.

Par. (3). Pub. L. 98–94, §1268(11)(F), substituted ''Advanced'' for ''advanced''.

Pub. L. 98–94, §1003(a)(1), inserted parenthetical provision relating to a fifth academic year or a combination of a fifth academic year and summer sessions.

CROSS REFERENCES

Compensation for work injuries, see section 8140 of Title 5, Government Organization and Employees.

§2102. Establishment

(a) For the purpose of preparing selected students for commissioned service in the Army, Navy, Air Force, or Marine Corps, the Secretary of each military department, under regulations prescribed by the President, may establish and maintain a Senior Reserve Officers' Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees, and at any school essentially military that does not confer baccalaureate degrees, upon the request of the authorities at that institution.

(b) No unit may be established or maintained at an institution unless—

(1) the senior commissioned officer of the armed force concerned who is assigned to the program at that institution is given the academic rank of professor;

(2) the institution fulfills the terms of its agreement with the Secretary of the military department concerned; and

(3) the institution adopts, as a part of its curriculum, a four-year course of military in-

struction or a two-year course of advanced training of military instruction, or both, which the Secretary of the military department concerned prescribes and conducts.

(c) At those institutions where a unit of the program is established membership of students in the program shall be elective or compulsory as provided by State law or the authorities of the institution concerned.

(d) The President shall cause to be established and maintained in each State at least one unit of the program if—

(1) a unit is requested by an educational institution in the State;

(2) such request is approved by the Governor of the State in which the institution requesting the unit is located; and

(3) the Secretary of the military department concerned determines that there will be not less than 40 students enrolled in such unit and that the provisions of this section are otherwise satisfied.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 95–79, title VI, § 602, July 30, 1977, 91 Stat. 332.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95–79 added subsec. (d).

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense, see section 1(10) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

MILITARY TRAINING FOR FEMALE UNDERGRADUATES AT MILITARY COLLEGES; REGULATIONS

Pub. L. 95–485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, which directed the Secretary of Defense to require that any college or university designated as a military college provide that qualified female undergraduate students be eligible to participate in military training at such college or university, and prohibited the Secretary from requiring such college or university to require female undergraduate students enrolled in such college or university to participate in military training, was repealed by Pub. L. 98–525, title XIV, §§ 1403(b), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985. See section 2009 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2130a of this title.

§ 2103. Eligibility for membership

(a) To be eligible for membership in the program a person must be a student at an institution where a unit of the Senior Reserve Officers' Training Corps is established. However, a student at an institution that does not have a unit of the Corps is eligible, if otherwise qualified, to be a member of a unit at another institution.

(b) Persons from foreign countries may be enrolled as members of the program when their enrollment is approved by the Secretary of the military department concerned under criteria approved by the Secretary of State.

(c) A medical, dental, pharmacy, veterinary, or sciences allied to medicine, student may be admitted to a unit of the program for a course of training consisting of 90 hours of instruction a year for four academic years.

(d) Under such conditions as the Secretary of the military department concerned may prescribe, a medical, dental, pharmacy, veterinary, or sciences allied to medicine, student who is a commissioned officer of a reserve component of an armed force may be admitted to and trained in a unit of the program.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2104 of this title.

§ 2104. Advanced training; eligibility for

(a) Advanced training shall be provided to eligible members of the program and, if the institution concerned so requests, to eligible applicants for membership in the program.

(b) To be eligible for continuation, or initial enrollment, in the program for advanced training, a person must—

(1) be a citizen of the United States;

(2) be selected for advanced training under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in a reserve component of an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that he will serve in the armed forces for the period prescribed by the Secretary;

(6) either—

(A) complete successfully—

(i) the first two years of a four-year Senior Reserve Officers' Training Corps course; or

(ii) field training or a practice cruise of not less than six weeks' duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course; or

(B) at the discretion of the Secretary concerned, agree in writing to complete field training or a practice cruise, as prescribed by the Secretary concerned, within two years after admission to the advanced course; and

(7) execute a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

(c) A member of the program who is ineligible under subsection (b) for advanced training shall be released from the program.

(d) This section does not apply to cadets and midshipmen appointed under section 2107, or foreign students enrolled under section 2103(b), of this title.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 98–94, title X,

§1003(a)(2), Sept. 24, 1983, 97 Stat. 656; Pub. L. 98–525, title V, §543(a), title XIV, §1401(h), Oct. 19, 1984, 98 Stat. 2530, 2619.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (b)(7) of this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8018], 98 Stat. 1904, 1926.

Dec. 8, 1983, Pub. L. 98–212, title VII, §722, 97 Stat. 1442.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §722], 96 Stat. 1833, 1854.

Dec. 29, 1981, Pub. L. 97–114, title VII, §722, 95 Stat. 1582.

Dec. 15, 1980, Pub. L. 96–527, title VII, §723, 94 Stat. 3085.

Dec. 21, 1979, Pub. L. 96–154, title VII, §723, 93 Stat. 1156.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §823, 92 Stat. 1248.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §822, 91 Stat. 903.

Sept. 22, 1976, Pub. L. 94–419, title VII, §722, 90 Stat. 1295.

Feb. 9, 1976, Pub. L. 94–212, title VII, §722, 90 Stat. 172.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §822, 88 Stat. 1228.

Jan. 2, 1974, Pub. L. 93–238, title VII, §723, 87 Stat. 1042.

Oct. 26, 1972, Pub. L. 92–570, title VII, §723, 86 Stat. 1200.

Dec. 18, 1971, Pub. L. 92–204, title VII, §723, 85 Stat. 731.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §823, 84 Stat. 2034.

Dec. 29, 1969, Pub. L. 91–171, title VI, §623, 83 Stat. 484.

Oct. 17, 1968, Pub. L. 90–580, title V, §522, 82 Stat. 1133.

Sept. 29, 1967, Pub. L. 90–96, title VI, §622, 81 Stat. 246.

Oct. 15, 1966, Pub. L. 89–687, title VI, §622, 80 Stat. 995.

Sept. 29, 1965, Pub. L. 89–213, title VI, §622, 79 Stat. 877.

Aug. 19, 1964, Pub. L. 88–446, title VI, §522, 78 Stat. 478.

Oct. 17, 1963, Pub. L. 88–149, title V, §522, 77 Stat. 267.

Aug. 9, 1962, Pub. L. 87–577, title V, §522, 76 Stat. 332.

Aug. 17, 1961, Pub. L. 87–144, title VI, §622, 75 Stat. 379.

July 7, 1960, Pub. L. 86–601, title V, §522, 74 Stat. 353.

Aug. 18, 1959, Pub. L. 86–166, title V, §622, 73 Stat. 382.

Aug. 22, 1958, Pub. L. 85–724, title VI, §624, 72 Stat. 728.

Aug. 2, 1957, Pub. L. 85–117, title VI, §625, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, §625, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, §629, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, §731, 68 Stat. 356.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–525, §543(a)(1), struck out ‘‘, who have at least two academic years remaining at such educational institution’’ after ‘‘in the program’’.

Subsec. (b)(6). Pub. L. 98–525, §543(a)(2), inserted initial word ‘‘either’’, redesignated existing subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), and added subpar. (B).

Subsec. (b)(7). Pub. L. 98–525, §1401(h), added par. (7).

1983—Subsec. (a). Pub. L. 98–94 substituted ‘‘who have at least two academic years’’ for ‘‘who have two academic years’’.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 543(b) of Pub. L. 98–525 provided that: ‘‘The amendments made by subsection (a) [amending this section] do not constitute authority for the enactment of new budget authority for a fiscal year beginning before October 1, 1984.’’

Amendment by section 1401(h) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1478, 2105, 2106, 2109 of this title; title 37 section 209.

§2105. Advanced training; failure to complete or to accept commission

A member of the program who is selected for advanced training under section 2104 of this title, and who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than two years.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1066.)

§2106. Advanced training; commission on completion

(a) Upon satisfactorily completing the academic and military requirements of the program of advanced training, a member of the program who was selected for advanced training under section 2104 of this title may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(b) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be, in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(c) In computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training, other than any period of enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 102–484, div. A, title V, §517(a)(1), Oct. 23, 1992, 106 Stat. 2407.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484 inserted before period at end ‘‘, other than any period of enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve’’.

CROSS REFERENCES

Reimbursement for additional uniforms and equipment, see section 416 of Title 37, Pay and Allowances of the Uniformed Services.

Uniform and equipment allowance, see section 415 of Title 37.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 978 of this title; title 37 section 416.

§2107. Financial assistance program for specially selected members

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible

member of the program who will be under 25 years of age on June 30 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy or as a second lieutenant in the Army, Air Force, or Marine Corps, as the case may be, except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 29 years of age on such date.

(b) To be eligible for appointment as a cadet or midshipman under this section a member must—

(1) be a citizen of the United States;

(2) be specially selected for the financial assistance program under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in the reserve component of the armed force in which he is appointed as a cadet or midshipmen for the period prescribed by the Secretary of the military department concerned;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program; and

(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will—

(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe; and

(ii) serve on active duty for four or more years;

(B)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department concerned; or

(C)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary of the receipt of such appointment, unless such appointment is otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as may be prescribed by the Secretary of the military department concerned.

The performance of service under clause (5)(B) or (5)(C) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed, except that performance of service under clause (5)(C) shall include not less than two years of active duty.

(c) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses. In the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, financial assistance under this section may also be provided during a fifth academic year or during a combination of a part of a fifth academic year and summer sessions. At least 50 percent of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at that rate.

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(f) A cadet or midshipman who does not complete the four-year course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service, other than concurrent enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve.

(h)(1) Not more than 29,500 cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time. The Secretary of Defense shall determine the number of cadets and midshipmen appointed under this section who may be in the financial

assistance programs at any one time in each military department.

(2) Of the total number of cadets appointed in the financial assistance programs under this section in any year, not less than 100 shall be designated for placement in the program of the Army for service upon commissioning in the Army National Guard, of which one-half shall be for financial assistance awarded for a period of two years and the remainder shall be for financial assistance awarded for a period of four years. A cadet who receives financial assistance under this paragraph and is commissioned in the Army National Guard shall perform service as provided in subsection (b)(5)(B) and may not be accepted for service on active duty pursuant to the member's voluntary application until the completion of the period of service prescribed in that subsection. The Secretary of the Army shall prescribe regulations to ensure a geographical distribution of the cadets who receive financial assistance under this paragraph.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 92–166, §1, Nov. 24, 1971, 85 Stat. 487; Pub. L. 96–357, §1(a), (b), Sept. 24, 1980, 94 Stat. 1178; Pub. L. 96–513, title V, §511(62), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 97–60, title II, §201, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 98–94, title X, §1003(a)(3), (c)(1), (2), Sept. 24, 1983, 97 Stat. 656, 657; Pub. L. 98–525, title V, §542(a), title XIV, §1405(33), Oct. 19, 1984, 98 Stat. 2529, 2624; Pub. L. 100–180, div. A, title V, §510, Dec. 4, 1987, 101 Stat. 1087; Pub. L. 102–484, div. A, title V, §§517(a)(2), 532(a), Oct. 23, 1992, 106 Stat. 2407, 2411.)

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–484, §517(a)(2), inserted before period at end ", other than concurrent enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve".

Subsec. (h). Pub. L. 102–484, §532(a), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (h). Pub. L. 100–180 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "Not more than the following numbers of cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time:

"Army program: 12,000.

"Navy program: 8,000.

"Air Force program: 9,500."

1984—Subsec. (b). Pub. L. 98–525, §1405(33), aligned margin of provision following par. (5)(C)(ii) flush with left margin.

Subsec. (b)(5)(A)(i). Pub. L. 98–525, §542(a)(1), inserted "or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe".

Subsec. (b)(5)(C)(ii). Pub. L. 98–525, §542(a)(2), substituted "at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary" for "the sixth anniversary".

1983—Subsec. (b)(5). Pub. L. 98–94, §1003(c)(1), struck out "either" after "he will" in provisions preceding subpar. (A)(i), and added subpar. (C).

Pub. L. 98–94, §1003(c)(2), inserted in provisions following subpar. (C) "or (5)(C)" after "(5)(B)" and ", except that performance of service under clause (5)(C) shall include not less than two years of active duty".

Subsec. (c). Pub. L. 98–94, §1003(a)(3), inserted provision relating to a student enrolled in an approved academic program which requires more than four academic years for completion of the baccalaureate degree requirements.

1981—Subsec. (h). Pub. L. 97–60 substituted "8,000" for "6,000" in item covering the Navy program and "9,500" for "6,500" in item covering the Air Force program.

1980—Subsec. (a). Pub. L. 96–357, §1(a), authorized cadet or midshipmen appointments in the reserve of an armed force for eligible members of the program with active duty service in the armed forces beyond the age limitation equal to period of active duty service not to exceed 29 years of age by June 30 of calendar year of appointment and deleted provision for appointment as cadets or midshipmen from persons in two-year Senior Reserve Officers' Training Corps course up to 20 percent of number of appointees.

Subsec. (b)(5). Pub. L. 96–357, §1(b)(2), provided for exercise of discretion by the Secretary concerned, incorporated existing provisions in subcl. (A)(i), incorporated in subcl. (A)(ii) provision of former cl. (6), added subcl. (B) and defined the performance of service under such subcl. (B).

Subsec. (b)(6). Pub. L. 96–357, §1(b)(2), struck out cl. (6) requiring as condition of appointment a written agreement for active duty service of four or more years. See subcl. (5)(A)(ii).

Subsec. (e). Pub. L. 96–513, §511(62)(A), substituted "Military" for "Miilitary".

Subsec. (h). Pub. L. 96–513, §511(62)(B), substituted "this section" for "section 2107 of this title".

Pub. L. 96–357, §1(b)(3), substituted "Army program: 12,000" for "Army program: 6,500".

1971—Subsec. (a). Pub. L. 92–166, §1(1), substituted "Not more than 20 percent of the persons appointed as cadets or midshipmen by the Secretary in any year may be appointed from persons in the two-year Senior Reserve Officers' Training Corps course.", for "However, a member whose enrollment in the Senior Reserve Officers' Training Corps program contemplates less than four years of participation in the program may not be appointed a cadet or midshipman under this section, or receive any financial assistance authorized by this section.".

Subsec. (c). Pub. L. 92–166, §1(2), provided that at least 50% of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at the rate.

Subsec. (h). Pub. L. 92–166, §1(4), substituted "Army program: 6500" for "Army program: 5500", "Navy program: 6000" for "Navy program: 5500" and "Air Force program: 6500" for "Air Force program: 5500".

EFFECTIVE DATE OF 1992 AMENDMENT

Section 532(b) of Pub. L. 102–484 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1993."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1003(c)(3) of Pub. L. 98–94 provided that: "The amendments made by this subsection [amending this section] shall apply with respect to agreements entered into under section 2107(b)(5) of title 10, United States Code, after September 30, 1983."

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by Pub. L. 96–357 effective Oct. 1, 1980, see section 1(e) of Pub. L. 96–357, set out as a note under section 2107a of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–166 provided that: "This Act [amending this section] is effective July 1, 1971."

EFFECTIVE DATE

Section 403 of Pub. L. 88–647 provided that: "Insofar as it relates to the Army program and the Air Force program, section 2107(h) of title 10, United States Code [subsec. (h) of this section], becomes effective on Sep-

tember 1, 1968. Until that date, not more than four thousand cadets may be in either of those programs at any one time. So far as it relates to the Navy program, section 2107(h) of title 10 becomes effective on September 1, 1965.''

APPLICATION OF ROTC VITALIZATION ACT OF 1964 TO APPOINTEES IN NAVAL RESERVE BEFORE OCTOBER 13, 1964

Section 1 of Pub. L. 89–51, June 28, 1965, 79 Stat. 173, provided: ''That all provisions of law except sections 2107(b)(3) and (f) of title 10, United States Code [subsecs. (b)(3) and (f) of this section], that apply to midshipmen appointed under Public Law 88–647 [see Short Title note set out under section 2031 of this title], apply to midshipmen appointed in the Naval Reserve before October 13, 1964.'' Section 4 of Pub. L. 89–51, set out as Effective Date of 1965 Amendment note under section 2109 of this title, provided that section 1 of Pub. L. 89–51 was effective Oct. 13, 1964.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2104, 2106, 2107a, 16134, 16203 of this title; title 37 sections 209, 416, 422; title 38 sections 3011, 3012.

§ 2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard

(a)(1) The Secretary of the Army may appoint as a cadet in the Army Reserve or Army National Guard of the United States any eligible member of the program who is enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution and who will be under 25 years of age on June 30 of the calendar year in which he is eligible under this section for appointment as a second lieutenant in the Army Reserve or Army National Guard, except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 29 years of age on such date.

(2) To be considered a military college or military junior college for the purposes of this section, a school must be a civilian postsecondary educational institution essentially military in nature and meet such other requirements as the Secretary of the Army may prescribe. For purposes of this section, a military junior college does not confer a baccalaureate degree.

(b) To be eligible for appointment as a cadet under this section, a member of the program must—

(1) be a citizen of the United States;

(2) be specially selected for the financial assistance program under this section under procedures prescribed by the Secretary of the Army;

(3) enlist in a reserve component of the Army for the period prescribed by the Secretary of the Army;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the Army to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army Reserve or the Army National Guard of the United States; and

(6) agree in writing that he will serve in a troop program unit of the Army Reserve or Army National Guard for not less than eight years.

Performance of duty under an agreement under this subsection shall be under such terms and conditions as the Secretary of the Army may prescribe and may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed.

(c) The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

(d) Upon satisfactorily completing the academic and military requirements of the program, a cadet may be appointed as a reserve officer in the Army in the grade of second lieutenant, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets from the United States Military Academy in that year. The Secretary of the Army shall establish the date of rank of all other officers appointed under this section.

(f) A cadet who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section, may be ordered to active duty by the Secretary of the Army to serve in his enlisted grade for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service as a cadet or with concurrent enlisted service.

(h) The Secretary of the Army shall appoint not more than 208 cadets each year under this section, to include not less than 10 cadets at each military junior college at which there are not less than 10 members of the program eligible under subsection (b) for such an appointment. At any military college at which in any year there are fewer than 10 such members, the Secretary shall appoint each such member as a cadet under this section.

(i) Cadets appointed under this section are in addition to the number appointed under section 2107 of this title.

(Added Pub. L. 96–357, § 1(c)(1), Sept. 24, 1980, 94 Stat. 1179; amended Pub. L. 102–190, div. A, title V, § 522(a), (b)(1), Dec. 5, 1991, 105 Stat. 1362.)

AMENDMENTS

1991—Pub. L. 102–190, § 522(b)(1), substituted ''Army Reserve and Army National Guard'' for ''military junior colleges'' in section catchline.

Subsec. (a)(1). Pub. L. 102–190, § 522(a)(1), substituted ''enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution'' for ''a student at

a military junior college'' and inserted ''Reserve or Army National Guard'' after ''second lieutenant in the Army''.

Subsec. (a)(2). Pub. L. 102–190, §522(a)(2), inserted ''military college or'' after ''To be considered a'', substituted ''and meet'' for ''that does not confer baccalaureate degrees and that meets'', and inserted at end ''For purposes of this section, a military junior college does not confer a baccalaureate degree.''

Subsec. (b)(6). Pub. L. 102–190, §522(a)(3), substituted ''a troop program unit of the Army Reserve or Army National Guard'' for ''such reserve component''.

Subsec. (f). Pub. L. 102–190, §522(a)(4), inserted ''or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section,'' after ''when offered,''.

Subsec. (h). Pub. L. 102–190, §522(a)(5), struck out par. (1) designation, substituted ''not more than 208 cadets each year under this section, to include not less than 10 cadets'' for ''not less than 10 cadets under this section each year'', and struck out par. (2) which read as follows: ''If the level of participation in the program at any military junior college meets criteria for such participation established by the Secretary of the Army by regulation, the Secretary shall appoint additional cadets under this section from among members of the program at such military junior college who are eligible under subsection (b) for such an appointment.''

EFFECTIVE DATE

Section 1(e) of Pub. L. 96–357 provided that: ''The amendments made by this section [enacting this section and amending sections 2107 and 2108 of this title] shall take effect on October 1, 1980.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2108 of this title.

§2108. Advanced standing; interruption of training; delay in starting obligated service; release from program

(a) The Secretary of the military department concerned may give to any enlisted member of an armed force under his jurisdiction, or any person who has served on active duty in any armed force, such advanced standing in the program as may be justified by his education and training.

(b) In determining a member's eligibility for advanced training, the Secretary of the military department concerned may credit him with any military training that is substantially equivalent in kind to that prescribed for admission to advanced training and was received while he was taking a course of instruction in a program under the jurisdiction of another armed force or while he was on active duty in the armed forces.

(c) The Secretary of the military department concerned may excuse from a portion of the prescribed course of military instruction, including field training and practice cruises, any person found qualified on the basis of his previous education, military experience, or both.

(d) A person may become, remain, or be readmitted as, a member of the advanced training program after receiving a baccalaureate degree or completing pre-professional studies if he has not completed the course of military instruction or all field training or practice cruises prescribed by the Secretary of the military department concerned. If a member of the program has been accepted for resident graduate or professional study, the Secretary of the military department concerned may delay the commencement of that member's obligated period of active duty, and any obligated period of active duty for training or other service in an active or inactive status in a reserve component, until the member has completed that study. If a cadet appointed under section 2107a of this title has been accepted for a course of study at an accredited civilian educational institution authorized to grant baccalaureate degrees, the Secretary of the Army may delay the beginning of that member's obligated period of service in a reserve component until the member has completed such course of study.

(e) The Secretary of the military department concerned may, when he determines that the interest of the service so requires, release any person from the program and discharge him from his armed force.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1068; amended Pub. L. 96–357, §1(d), Sept. 24, 1980, 94 Stat. 1180.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–357 authorized delay in starting obligated period of active duty for training or other service in an active or inactive status in a reserved component until completion of resident graduate or professional study or military junior college studies.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–357 effective Oct. 1, 1980, see section 1(e) of Pub. L. 96–357, set out as a note under section 2107a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2107 of this title.

§2109. Practical military training

(a) For the further practical instruction of members of, and designated applicants for membership in, the program, the Secretary of the military department concerned may prescribe and conduct practical military training, in addition to field training and practice cruises prescribed under section 2104(b)(6) of this title. The Secretary concerned may require that some or all of the training prescribed under this subsection must be completed by a member before the member is commissioned.

(b) The Secretary of the military department concerned, with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title, may—

(1) transport members of, and designated applicants for membership in, the program to and from the places designated for such training or practice cruises and furnish them subsistence while traveling to and from those places, or, instead of furnishing them transportation and subsistence, pay them a travel allowance at the rate prescribed for cadets and midshipmen at the United States Military, Naval, and Air Force Academies for travel by the shortest usually traveled route from the places from which they are authorized to proceed to the place designated for the training or cruise and return, and pay the allowance for the return trip in advance;

(2) furnish medical attendance and supplies to members of, and designated applicants for membership in, the program while attending such training and practice cruises, and admit them to military hospitals;

(3) furnish subsistence, uniform clothing, and equipment to members of, and designated applicants for membership in, the program while attending such training or practice cruises or, instead of furnishing uniform clothing, pay them allowances at such rates as he may prescribe; and

(4) use any member of, and designated applicants for membership in, an armed force, or any employee of the department, under his jurisdiction, and such property of the United States as he considers necessary, for the training and administration of members of, and designated applicants for membership in, the program at the places designated for training or practice cruises.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1068; amended Pub. L. 89–51, § 2, June 28, 1965, 79 Stat. 173; Pub. L. 89–718, § 17, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 100–456, div. A, title VI, § 633(a)(1)–(3)(A), Sept. 29, 1988, 102 Stat. 1986.)

AMENDMENTS

1988—Pub. L. 100–456, § 633(a)(3)(A), substituted ''Practical military training'' for ''Field training; practice cruises'' in section catchline.

Subsec. (a). Pub. L. 100–456, § 633(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For the further practical instruction of members of the program, the Secretary of the military department concerned may prescribe and conduct field training and practice cruises (other than field training and practice cruises prescribed under section 2104(b)(6)(B) of this title) which members must complete before they are commissioned.''

Subsec. (b). Pub. L. 100–456, § 633(a)(2), inserted '', with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title,'' before ''may'' in introductory provisions, and substituted ''such training'' for ''field training'' in pars. (1) to (3).

1966—Subsec. (b). Pub. L. 89–718 inserted ''and'' at end of par. (3).

1965—Subsec. (b). Pub. L. 89–51 inserted '', and designated applicants for membership in,'' after ''members of'' in pars. (1) to (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 633(e) of Pub. L. 100–456 provided that: ''The amendments made by this section [amending this section, section 8140 of Title 5, Government Organization and Employees, section 209 of Title 37, Pay and Allowances of the Uniformed Services, and section 101 of Title 38, Veterans' Benefits] shall apply only with respect to training performed after September 30, 1988.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4 of Pub. L. 89–51 provided that: ''The effective date of this Act [amending this section and section 209 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 2107 of this title] is October 13, 1964.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 209, 1006.

§ 2110. Logistical support

(a) The Secretary of the military department concerned may issue to institutions having units of the program, or to the officers of the armed force concerned who are designated as accountable or responsible for such property—

(1) supplies, means of transportation including aircraft, arms and ammunition, and military textbooks and educational materials; and

(2) uniform clothing, except that he may pay monetary allowances for uniform clothing at such rate as he may prescribe.

(b) The Secretary of the military department concerned may provide, or contract with civilian flying or aviation schools or educational institutions to provide, the personnel, aircraft, supplies, facilities, services, and instruction necessary for flight instruction and orientation for properly designated members of the program.

(c) The Secretary of the military department concerned may transport members of, and designated applicants for membership in, the program to and from installations when it is necessary for them to undergo medical or other examinations or for the purposes of making visits of observation. He may also furnish them subsistence, quarters, and necessary medical care, including hospitalization, while they are at, or traveling to or from, such an installation.

(d) The Secretary of the military department concerned may authorize members of, and designated applicants for membership in, the program to participate in aerial flights in military aircraft and in indoctrination cruises in naval vessels.

(e) The Secretary of the military department concerned may authorize such expenditures as he considers necessary for the efficient maintenance of the program.

(f) The Secretary of the military department concerned shall require, from each institution to which property is issued under subsection (a), a bond or other indemnity in such amount as he considers adequate, but not less than $5,000, for the care and safekeeping of all property so issued except uniforms, expendable articles, and supplies expended in operation, maintenance, and instruction. The Secretary may accept a bond without surety if the institution to which the property is issued furnishes to him satisfactory evidence of its financial responsibility.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1069; amended Pub. L. 89–718, § 18, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 94–273, § 11(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 97–375, title I, § 104(c), Dec. 21, 1982, 96 Stat. 1819.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–375 struck out requirement that the Secretary of each military department report annually to Congress in April on the progress of the flight instruction program.

1976—Subsec. (b). Pub. L. 94–273 substituted ''April'' for ''January''.

1966—Subsec. (a)(1). Pub. L. 89–718 substituted ''educational'' for ''education''.

§ 2111. Personnel: administrators and instructors

The Secretary of the military department concerned may detail regular or reserve members of an armed force under his jurisdiction (including retired members and members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent) for instruc-

tional and administrative duties at educational institutions where units of the program are maintained.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1069.)

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
2112. Establishment.
2113. Board of Regents.
2114. Students: selection; status; obligation.
2115. Graduates: limitation on number permitted to perform civilian Federal service.
[2116, 2117. Repealed.]

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, §1484(b)(2)(B), Nov. 5, 1990, 104 Stat. 1716, struck out item 2117 ''Authorization for appropriations''.

1983—Pub. L. 98–94, title XII, §1268(12)(B), Sept. 24, 1983, 97 Stat. 706, struck out item 2116 ''Reports to Congress''.

1979—Pub. L. 96–107, title VIII, §803(c)(3), Nov. 9, 1979, 93 Stat. 812, substituted ''permitted'' for ''electing'' and ''service'' for ''duty'' in item 2115.

§2112. Establishment

(a) There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter in this chapter referred to as the ''University''), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually, with the first class graduating not later than September 21, 1982.

(b) Except as provided in subsection (a), the numbers of persons to be graduated from the University shall be prescribed by the Secretary of Defense. In so prescribing the number of persons to be graduated from the University, the Secretary of Defense shall, upon recommendation of the Board of Regents, institute actions necessary to ensure the maximum number of first-year enrollments in the University consistent with the academic capacity of the University and the needs of the uniformed services for medical personnel.

(c) The development of the University may be by such phases as the Secretary of Defense may prescribe subject to the requirements of subsection (a).

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 713; amended Pub. L. 96–107, title VIII, §803(a), Nov. 9, 1979, 93 Stat. 811; Pub. L. 96–513, title V, §511(63), (64), Dec. 12, 1980, 94 Stat. 2925, 2926.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 inserted ''in this chapter'' after ''hereinafter'', and substituted ''September 21, 1982'' for ''10 years after the date of the enactment of this chapter''.

1979—Subsec. (b). Pub. L. 96–107 inserted provisions respecting the maximum number of first-year enrollments in the University.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SHORT TITLE

Section 1 of Pub. L. 92–426 provided: ''That this Act [enacting this chapter and chapter 105 of this title] may be cited as the 'Uniformed Services Health Professions Revitalization Act of 1972'.''

TRANSFER OF FUNCTIONS

For transfer of authority of Board of Regents of Uniformed Services University of the Health Sciences to Secretary of Defense, see section 8091 of Pub. L. 101–511, set out as a note under section 2113 of this title.

CONTINUATION OF UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Pub. L. 103–337, div. A, title IX, §922, Oct. 5, 1994, 108 Stat. 2829, provided that:

''(a) CLOSURE PROHIBITED.—The Uniformed Services University of the Health Sciences may not be closed.

''(b) BUDGETARY COMMITMENT TO CONTINUATION.—It is the sense of Congress that the Secretary of Defense should budget for the ongoing operation of the Uniformed Services University of the Health Sciences as an institution of professional education that is vital to the education and training each year of significant numbers of personnel of the uniformed services for careers as uniformed services health care providers.

''(c) GAO EVALUATION.—Not later than June 1, 1995, the Comptroller General of the United States shall submit to Congress a detailed report on the Uniformed Services University of the Health Sciences. The report shall include the following:

''(1) A comparison of the cost of obtaining physicians for the Armed Forces from the University with the cost of obtaining physicians from other sources.

''(2) An assessment of the retention rate needs of the Armed Forces for physicians in relation to the respective retention rates of physicians obtained from the University and physicians obtained from other sources and the factors that contribute to retention rates among military physicians obtained from all sources.

''(3) A review of the quality of the medical education provided at the University with the quality of medical education provided by other sources of military physicians.

''(4) A review of the overall issue of the special needs of military medicine and how those special needs are being met by physicians obtained from University and physicians obtained from other sources.

''(5) An assessment of the extent to which the University has responded to the 1990 report of the Inspector General of the Department of Defense, including recommendations as to resolution of any continuing issues relating to management and internal fiscal controls of the University, including issues relating to the Henry M. Jackson Foundation for the Advancement of Military Medicine identified in the 1990 report.

''(6) Such other recommendations as the Comptroller General considers appropriate.''

F. EDWARD HÉBERT SCHOOL OF MEDICINE

Pub. L. 98–94, title XII, §1265, Sept. 24, 1983, 97 Stat. 704, provided that: ''The School of Medicine of the Uniformed Services University of the Health Sciences shall after the date of the enactment of this Act [Sept. 24, 1983] be known and designated as the 'F. Edward Hébert School of Medicine'. Any reference to such school of medicine in any law, regulation, map, document, or other record of the United States shall after such date be deemed to be a reference to such school of medicine as the F. Edward Hébert School of Medicine.''

§2113. Board of Regents

(a) The business of the University shall be conducted by a Board of Regents (hereinafter in this chapter referred to as the ''Board'') with funds appropriated for and provided by the De-

partment of Defense. The Board shall consist of—

(1) nine persons outstanding in the fields of health and health education who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate;

(2) the Secretary of Defense, or his designee, who shall be an ex officio member;

(3) the surgeons general of the uniformed services, who shall be ex officio members; and

(4) the person referred to in subsection (d).

(b) The term of office of each member of the Board (other than ex officio members) shall be six years except that—

(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term;

(2) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment, three at the end of two years, three at the end of four years, and three at the end of six years; and

(3) any member whose term of office has expired shall continue to serve until his successor is appointed.

(c) One of the members of the Board (other than an ex officio member) shall be designated by the President as Chairman. He shall be the presiding officer of the Board.

(d) The Board shall appoint a Dean of the University (hereinafter in this chapter referred to as the ''Dean'') who shall also serve as a nonvoting ex officio member of the Board.

(e) Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary of Defense, but not exceeding $100 per diem and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.

(f)(1) The Board, after considering the recommendations of the Dean, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary of Defense so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions within the vicinity of the District of Columbia. The Board may confer academic titles, as appropriate, upon military and civilian members of the faculty. The military members of the faculty shall include a professor of military, naval, or air science as the Board may determine.

(2) The Board may exempt, at any time, a physician who is a member of the faculty from the restrictions in subsections (a), (b), and (c) of section 5532 of title 5, if the Board determines that such exemption is necessary to recruit or retain well-qualified physicians for the faculty of the University. An exemption granted under this paragraph shall terminate upon any break in employment with the University by a physician of three days or more. An exemption granted under this paragraph to a person shall apply to the retired pay of such person beginning with the first month after the month in which the exemption is granted. Not more than five exemptions may be in effect under this paragraph at any time.

(g) The Board is authorized to negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources located in or near the District of Columbia. Under such agreements the facilities concerned will retain their identities and basic missions. The Board is also authorized to negotiate affiliation agreements with an accredited university or universities in or near the District of Columbia. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs. The Board may also, subject to the approval of the Secretary of Defense, enter into an agreement under which the University would become part of a national university of health sciences should such an institution be established in the vicinity of the District of Columbia.

(h) The Board may establish postdoctoral, postgraduate, and technological institutes.

(i) The Board shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(j)(1) The Board also is authorized—

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, on such terms and conditions as the Board determines appropriate, such space, facilities, equipment, and support services within the University as the Board considers necessary to accomplish cooperative enterprises undertaken by such Foundation and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine under which the Board may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such foundation and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity

may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; and

(F) to accept the voluntary services of guest scholars and other persons.

(2) The Board may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Board may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 714; amended Pub. L. 95–589, Nov. 4, 1978, 92 Stat. 2512; Pub. L. 96–513, title V, §511(64), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–36, §3, May 27, 1983, 97 Stat. 201; Pub. L. 98–132, §2(b), Oct. 17, 1983, 97 Stat. 849; Pub. L. 99–661, div. A, title V, §505, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 101–189, div. A, title VII, §726(a), (b)(1), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 101–510, div. A, title XIII, §1322(a)(3), Nov. 5, 1990, 104 Stat. 1671.)

AMENDMENTS

1990—Subsec. (j)(1). Pub. L. 101–510, §1322(a)(3)(A), struck out ''subject to paragraph (2),'' before ''to make'' in subpar. (B) and before ''to enter'' in subpars. (C) and (E).

Subsec. (j)(2) to (5). Pub. L. 101–510, §1322(a)(3)(B), (C), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''The authority of the Board under clauses (B), (C), and (E) of paragraph (1) may be exercised only if—

''(A) before the Board enters into any arrangement under which any space, facility, equipment, or support service is made available under clause (B) of such paragraph, before the Board enters into any contract under clause (C) of such paragraph, or before the Board enters into any agreement under clause (E) of such paragraph, it notifies the Committees on Armed Services of the Senate and the House of Representatives in writing of the proposed arrangement, contract, or agreement, as the case may be, the terms and conditions thereof, and, in the case of a proposed agreement under clause (E) of paragraph (1), any appointments proposed to be made under the authority of paragraph (4) in connection with the agreement, and

''(B) a period of fifteen days has elapsed following the date on which the notice is received by such committees.''

1989—Subsec. (f)(2). Pub. L. 101–189, §726(a), substituted ''five exemptions'' for ''two exemptions''.

Subsec. (j)(1)(A). Pub. L. 101–189, §726(b)(1), inserted '', accept grants from, and make grants to'' after ''contracts with'' and substituted ''or any other'' for ''or with any other''.

1986—Subsec. (f). Pub. L. 99–661 designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (j). Pub. L. 98–132 inserted ''Henry M. Jackson'' before ''Foundation for the Advancement of Military Medicine'' wherever appearing.

Pub. L. 98–36 added subsec. (j).

1980—Subsecs. (a) and (d). Pub. L. 96–513 inserted ''in this chapter'' after ''hereinafter''.

1978—Subsec. (b)(3). Pub. L. 95–589 added par. (3).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

Section 8091 of Pub. L. 101–511 provided that: ''Notwithstanding any other provision of law, all authority of the Board of Regents of the Uniformed Services University of the Health Sciences is hereby transferred to the Secretary of Defense, and the Board hereafter shall be an advisory board to the Secretary of Defense.''

CROSS REFERENCES

General limitation on pay fixed by administrative action, see section 5373 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2114 of this title.

§2114. Students: selection; status; obligation

(a) Medical students at the University shall be selected under procedures prescribed by the Secretary of Defense. In so prescribing, the Secretary shall consider the recommendations of the Board. However, selection procedures prescribed by the Secretary of Defense shall emphasize the basic requirement that students demonstrate sincere motivation and dedication to a career in the uniformed services (as defined in section 1072(1) of this title).

(b) Medical students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. Notwithstanding any other provision of law, they shall serve on active duty in pay grade O–1 with full pay and allowances of that grade. Upon graduation they shall be appointed in a regular component, if qualified, unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:

Period of Service on Active Duty	Ready Reserve Obligation
Less than 8 years	6 years
8 years or more, but less than 9	4 years
9 years or more, but less than 10	2 years

The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

(c) A period of time spent in military intern or residency training shall not be creditable in satisfying a commissioned service obligation imposed by this section.

(d) A medical student who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section. In no case shall any such student be required to serve on active duty for any period in excess of a period equal to the period he participated in the program, except that in no case may any such student be required to serve on active duty less than one year.

(e)(1) The Board, upon approval of the Secretary of Defense, may enter into agreements with foreign military medical schools for reciprocal education programs under which students at the University receive specialized military medical instruction at the foreign military medical school and military medical personnel of the country of such medical school receive specialized military medical instruction at the University. Any such agreement may be made on a reimbursable basis or a nonreimbursable basis.

(2) Not more than 40 persons at any one time may receive instruction at the University under this subsection. Attendance of such persons at the University may not result in a decrease in the number of students enrolled in the University. Subsection (b) does not apply to students receiving instruction under this subsection.

(3) The Dean of the University, with the approval of the Secretary of Defense, shall determine the countries from which persons may be selected to receive instruction under this subsection and the number of persons that may be selected from each country. The Dean may establish qualifications and methods of selection and shall select those persons who will be permitted to receive instruction at the University. The qualifications established shall be comparable to those required of United States citizens.

(4) Each foreign country from which a student is permitted to receive instruction at the University under this subsection shall reimburse the United States for the cost of providing such instruction, unless such reimbursement is waived by the Secretary of Defense. The Secretary of Defense shall prescribe the rates for reimbursement under this paragraph.

(5) Except as the Dean determines, a person receiving instruction at the University under this subsection is subject to the same regulations governing attendance, discipline, discharge, and dismissal as a student enrolled in the University. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection that differ from the regulations that apply to a student enrolled in the University.

(f) In this section, the term ''commissioned service obligation'' means, with respect to an officer who is a graduate of the University, the period beginning on the date of the appointment of the officer in a regular component after graduation and ending on the tenth anniversary of that appointment.

(g) The Secretary of Defense shall establish such selection procedures, service obligations, and other requirements as the Secretary considers appropriate for graduate students (other than medical students) in a postdoctoral, postgraduate, or technological institute established pursuant to section 2113(h) of this title.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 715; amended Pub. L. 96–107, title VIII, § 803(b), Nov. 9, 1979, 93 Stat. 812; Pub. L. 96–513, title I, § 114, title V, § 511(65), Dec. 12, 1980, 94 Stat. 2877, 2926; Pub. L. 98–525, title XV, § 1535, Oct. 19, 1984, 98 Stat. 2633; Pub. L. 101–189, div. A, title V, § 511(a), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 101–510, div. A, title V, § 533(a), (b), Nov. 5, 1990, 104 Stat. 1564; Pub. L. 103–160, div. A, title VII, § 732(a), Nov. 30, 1993, 107 Stat. 1696.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, § 732(a)(1), substituted ''Medical students'' for ''Students'' in first sentence.

Subsec. (b). Pub. L. 103–160, § 732(a)(2), substituted ''Medical students'' for ''Students'' in two places.

Subsec. (d). Pub. L. 103–160, § 732(a)(3), substituted ''medical student'' for ''member of the program'' in first sentence and ''any such student'' for ''any such member'' in two places in second sentence.

Subsec. (g). Pub. L. 103–160, § 732(a)(4), added subsec. (g).

1990—Subsec. (b). Pub. L. 101–510, § 533(b)(1), after fourth sentence inserted provisions relating to the time obligation to be served in the Ready Reserve upon completion of, or release from, the active-duty service obligation for members of the program who served on active duty for less than 10 years.

Pub. L. 101–510, § 533(a), substituted ''seven years'' for ''10 years'' in fourth sentence.

Subsec. (c). Pub. L. 101–510, § 533(b)(2), substituted ''a commissioned service obligation'' for ''an active duty obligation''.

Subsec. (f). Pub. L. 101–510, § 533(b)(3), added subsec. (f).

1989—Subsec. (b). Pub. L. 101–189 substituted ''10 years'' for ''seven years'' in fourth sentence.

1984—Subsec. (e). Pub. L. 98–525 added subsec. (e).

1980—Subsec. (b). Pub. L. 96–513, § 511(65), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

Pub. L. 96–513, § 114, struck out provision under which officers attending the Uniformed Services University of Health Sciences were not counted against authorized military strengths.

1979—Subsec. (b). Pub. L. 96–107 substituted ''uniformed'' for ''uniform''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 732(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to students attending the Uniformed Services University of the Health Sciences on or after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 533(d) of Pub. L. 101–510 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on December 31, 1991, and shall apply to persons who are first admitted to the Uniformed Services University of the Health Sciences after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 511(e) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title V, § 533(c), Nov. 5, 1990, 104 Stat.

1564, provided that: ''The amendments made by this section [amending this section and sections 4348, 6959, and 9348 of this title] shall apply to persons who are first admitted to one of the military service academies after December 31, 1991.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 114 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511(65) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

TRANSFER OF FUNCTIONS

For transfer of authority of Board of Regents of Uniformed Services University of the Health Sciences to Secretary of Defense, see section 8091 of Pub. L. 101–511, set out as a note under section 2113 of this title.

§2115. Graduates: limitation on number permitted to perform civilian Federal service

The Secretary of Defense may allow not more than 20 percent of the graduates of each class at the University to perform civilian Federal service for not less than seven years following the completion of their professional education in lieu of active duty in a uniformed service if the needs of the uniformed services do not require that such graduates perform active duty in a uniformed service and as long as the Secretary of Defense does not recall such persons to active duty in the uniformed services. Such persons who execute an agreement in writing to perform such civilian Federal service may be released from active duty following the completion of their professional education. The location and type of their duty shall be determined by the Secretary of Defense after consultation with the heads of Federal agencies concerned.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 716; amended Pub. L. 96–107, title VIII, §803(c)(1), (2), Nov. 9, 1979, 93 Stat. 812.)

AMENDMENTS

1979—Pub. L. 96–107, §803(c)(2), substituted ''permitted'' for ''electing'' and ''service'' for ''duty'' in section catchline.

Pub. L. 96–107, §803(c)(1), substituted provisions respecting authority of the Secretary of Defense to allow graduates to perform civilian Federal service and the execution of agreements for such service as prerequisites for release from active duty following completion of education, for provisions relating to limitations on the number of graduates electing to perform civilian Federal duty, agreements respecting such service, and release from active duty upon completion of their education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2114 of this title.

[§2116. Repealed. Pub. L. 98–94, title XII, §1268(12)(A), Sept. 24, 1983, 97 Stat. 706]

Section, added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 716, directed Secretary of Defense to report periodically to Committees on Armed Services of the Senate and House of Representatives on feasibility of establishing educational institutions similar or identical to University at any other locations he deemed appropriate, with last such report to be submitted by June 30, 1976.

[§2117. Repealed. Pub. L. 101–510, div. A, title XIV, §1484(b)(2)(A), Nov. 5, 1990, 104 Stat. 1716]

Section, added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 716, authorized appropriations for the Uniformed Services University of the Health Sciences.

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS FINANCIAL ASSISTANCE PROGRAMS

Subchapter		Sec.
I.	Health Professions Scholarship and Financial Assistance Program for Active Service	2120
II.	Nurse Officer Candidate Accession Program	2130a

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1663(c)(7)(A), Oct. 5, 1994, 108 Stat. 3008, redesignated item for subchapter III as item for subchapter II and struck out former item for subchapter II ''Health Professions Stipend Program for Reserve Service''.

1989—Pub. L. 101–189, div. A, title VII, §§707(b), 725(h)(3), Nov. 29, 1989, 103 Stat. 1475, 1480, substituted ''and Financial Assistance Program'' for ''Program'' in item for subchapter I and added item for subchapter III.

1987—Pub. L. 100–180, div. A, title VII, §711(a)(1), Dec. 4, 1987, 101 Stat. 1108, substituted ''FINANCIAL ASSISTANCE PROGRAMS'' for ''SCHOLARSHIP PROGRAM'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

SUBCHAPTER I—HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM FOR ACTIVE SERVICE

Sec.
2120. Definitions.
2121. Establishment.
2122. Eligibility for participation.
2123. Members of the program: active duty obligation; failure to complete training; release from program.
2124. Members of the program: numbers appointed.
2125. Members of the program: exclusion from authorized strengths.
2126. Members of the program: service credit.
2127. Scholarships and financial assistance: payments.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title VII, §725(d)(3), (h)(2), Nov. 29, 1989, 103 Stat. 1479, 1480, substituted ''AND FINANCIAL ASSISTANCE PROGRAM'' for ''PROGRAM'' in subchapter heading and ''Scholarships and financial assistance'' for ''Contracts for scholarships'' in item 2127.

1987—Pub. L. 100–180, div. A, title VII, §711(a)(1), Dec. 4, 1987, 101 Stat. 1108, added subchapter heading.

1980—Pub. L. 96–513, title V, §511(66), Dec. 12, 1980, 94 Stat. 2926, substituted in item 2123 ''program:'' for ''program;'', and in items 2124 to 2127 '':'' for '';'' wherever appearing.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 227 of this title.

§2120. Definitions

In this subchapter:

(1) The term ''program'' means the Armed Forces Health Professions Scholarship and Financial Assistance program provided for in this subchapter.

(2) The term ''member of the program'' means a person appointed a commissioned offi-

cer in a reserve component of the armed forces who is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(3) The term ''course of study'' means education received at an accredited college, university, or institution in medicine, dentistry, or other health profession, leading, respectively, to a degree related to the health professions as determined under regulations prescribed by the Secretary of Defense.

(4) The term ''specialized training'' means advanced training in a health professions specialty received in an accredited program that is beyond the basic education required for appointment as a commissioned officer with a designation as a health professional.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 98–94, title XII, § 1268(13), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–189, div. A, title VII, § 725(a), (h)(1), Nov. 29, 1989, 103 Stat. 1478, 1480.)

AMENDMENTS

1989—Pars. (1), (2). Pub. L. 101–189, § 725(h)(1), substituted ''Scholarship and Financial Assistance program'' for ''Scholarship program''.

Par. (4). Pub. L. 101–189, § 725(a), added par. (4).

1987—Pub. L. 100–180 substituted ''subchapter'' for ''chapter'' in introductory text and in par. (1).

Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1983—Pub. L. 98–94 substituted a colon for a dash after ''In this chapter'' in text preceding par. (1).

§ 2121. Establishment

(a) For the purpose of obtaining adequate numbers of commissioned officers on active duty who are qualified in the various health professions, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, may establish and maintain a health professions scholarship and financial assistance program for his department.

(b) The program shall consist of courses of study and specialized training in designated health professions, with obligatory periods of military training.

(c) Persons participating in the program shall be commissioned officers in reserve components of the armed forces. Members pursuing a course of study shall serve on active duty in pay grade O–1 with full pay and allowances of that grade for a period of 45 days during each year of participation in the program. Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under section 3353, 5600, or 8353 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program. They shall be detailed as students at accredited civilian institutions, located in the United States or Puerto Rico, for the purpose of acquiring knowledge or training in a designated health profession. In addition, members of the program shall, under regulations prescribed by the Secretary of Defense, receive military and professional training and instruction.

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at the rate of $579 per month. That rate shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 96–107, title VIII, § 804(a), Nov. 9, 1979, 93 Stat. 812; Pub. L. 98–94, title IX, § 935(a), Sept. 24, 1983, 97 Stat. 652; Pub. L. 101–189, div. A, title VII, § 725(b), Nov. 29, 1989, 103 Stat. 1479; Pub. L. 101–510, div. A, title XIV, § 1484(k)(7), Nov. 5, 1990, 104 Stat. 1719.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 substituted ''section'' for ''sections'' in third sentence.

1989—Subsec. (a). Pub. L. 101–189, § 725(b)(1), substituted ''scholarship and financial assistance program'' for ''scholarship program''.

Subsec. (b). Pub. L. 101–189, § 725(b)(2), substituted ''study and specialized training'' for ''study''.

Subsec. (c). Pub. L. 101–189, § 725(b)(3), substituted ''pursuing a course of study'' for ''of the program'' and inserted after second sentence ''Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under sections 3353, 5600, or 8353 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program.''

1983—Subsec. (d). Pub. L. 98–94 amended subsec. (d) generally, substituting ''a stipend at the rate of $579 per month'' for ''a stipend at the rate in effect under paragraph (1)(B) of section 751(g) of the Public Health Service Act (42 U.S.C. 294t(g)) for students in the National Health Service Corps Scholarship program'' and inserting provision relating to an annual increase in the rate by the Secretary of Defense effective on July 1 of each year.

1979—Subsec. (d). Pub. L. 96–107 substituted provisions relating to entitlement to a stipend at the rate in effect for students in the National Health Services Corps Scholarship program, for provisions authorizing a stipend at the rate of $400 per month.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 935(b) of Pub. L. 98–94 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1983.''

EFFECTIVE DATE OF 1979 AMENDMENT

Section 804(c) of Pub. L. 96–107 provided that: ''The amendments made by this section [amending this section and section 313 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979.''

MEMBERS OF RESERVE COMPONENTS; SPECIALIZED TRAINING ASSISTANCE IN THE HEALTH PROFESSIONS

Pub. L. 99–145, title VI, § 672(a)–(h), (j), Nov. 8, 1985, 99 Stat. 663, 664, effective Oct. 1, 1985, which related to establishment and maintenance of program to provide financial assistance to persons engaged in specialized

training in health professions who agree to incur Selective Reserve obligation of 3 years for each year for which financial assistance is provided, was repealed by Pub. L. 100–180, div. A, title VII, §711(c)(1), (e)(1), Dec. 4, 1987, 101 Stat. 1111, effective Dec. 4, 1987, subject to a savings provision, see below.

Pub. L. 100–180, div. A, title VII, §711(c)(2), Dec. 4, 1987, 101 Stat. 1111, provided that: ''The repeal of section 672 of the Department of Defense Authorization Act, 1986 [section 672 of Pub. L. 99–145, see above], by paragraph (1) does not affect an agreement entered into under that section before such repeal, and the provisions of such section as in effect before such repeal shall continue to apply with respect to such agreement.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2127, 16201 of this title; title 37 sections 415, 1006.

§2122. Eligibility for participation

(a) To be eligible for participation as a member of the program, a person must be a citizen of the United States and must—

(1) be accepted for admission to, or enrolled in, an institution in a course of study or selected to receive specialized training;

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational phase of the program;

(B) accept an appropriate reappointment or designation within his military service, if tendered, based upon his health profession, following satisfactory completion of the program;

(C) participate in the intern program of his service if selected for such participation;

(D) participate in the residency program of his service, if selected, or be released from active duty for the period required to undergo civilian residency if selected for such training; and

(E) because of his sincere motivation and dedication to a career in the uniformed services, participate in military training while he is in the program, under regulations prescribed by the Secretary of Defense; and

(3) meet the requirements for appointment as a commissioned officer.

(b) The Secretary of Defense may require, as part of the agreement under subsection (a)(2), that a person must agree to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 100–180, div. A, title VII, §712(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 101–189, div. A, title VII, §725(c), Nov. 29, 1989, 103 Stat. 1479.)

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''study or selected to receive specialized training'' for ''study, as that term is defined in section 2120(3) of this title''.

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

§2123. Members of the program: active duty obligation; failure to complete training; release from program

(a) A member of the program incurs an active duty obligation. The amount of his obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each year of participation in the program.

(b) A period of time spent in military intern or residency training shall not be creditable in satisfying an active duty obligation imposed by this section.

(c) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section.

(d) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member of the program who is dropped from the program from an active duty obligation imposed by this section, but such relief shall not relieve him from any military obligation imposed by any other law.

(e) Any member of the program relieved of his active duty obligation under this subchapter before the completion of such obligation may, under regulations prescribed by the Secretary of Defense, be assigned to a health professional shortage area designated by the Secretary of Health and Human Services for a period equal to the period of obligation from which he was relieved.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, §511(67), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 100–180, div. A, title VII, §711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–597, title IV, §401(b), Nov. 16, 1990, 104 Stat. 3035.)

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–597 substituted ''a health professional shortage area'' for ''an area of health manpower shortage''.

1987—Subsec. (e). Pub. L. 100–180 substituted ''subchapter'' for ''chapter''.

1980—Subsec. (e). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§2124. Members of the program: numbers appointed

The number of persons who may be designated as members of the program for training in each health profession shall be as prescribed by the Secretary of Defense, except that the total number of persons so designated may not, at any time, exceed 6,000.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 99–145, title VI, §672(i), Nov. 8, 1985, 99 Stat. 664; Pub. L. 100–180,

div. A, title VII, §§ 711(a)(2), 712(b)(1), Dec. 4, 1987, 101 Stat. 1108, 1112; Pub. L. 101–189, div. A, title VII, § 725(g), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 102–190, div. A, title VII, § 717, Dec. 5, 1991, 105 Stat. 1404.)

AMENDMENTS

1991—Pub. L. 102–190 substituted ''except that the total number of persons so designated may not, at any time, exceed 6,000.'' for ''except that—

''(1) the total number of persons so designated in all of the programs authorized by this subchapter shall not, at any time, exceed 6,000; and

''(2) after September 30, 1991, of the total number of persons so designated, at least 2,500 shall be persons—

''(A) who are in the final two years of their course of study; and

''(B) who have agreed to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.''

1989—Par. (2). Pub. L. 101–189 inserted ''after September 30, 1991,'' after ''(2)''.

1987—Pub. L. 100–180, § 712(b)(1), substituted ''except that—'' and pars. (1) and (2) for ''except that the total number of persons so designated in all of the programs authorized by this subchapter shall not, at any time, exceed 6,000.''

Pub. L. 100–180, § 711(a)(2), substituted ''subchapter'' for ''chapter''.

1985—Pub. L. 99–145 substituted ''6,000'' for ''5,000''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 712(b)(2) provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1989.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 672(j) of Pub. L. 99–145, which provided that amendment made by that section was to take effect on Oct. 1, 1985, was repealed by Pub. L. 100–180, § 711(c)(1), (e)(1), eff. Dec. 4, 1987.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 99–145, title VI, § 672(i), Nov. 8, 1985, 99 Stat. 664, cited as a credit to this section, was repealed by Pub. L. 100–180, § 711(c)(1), (e)(1), eff. Dec. 4, 1987.

§ 2125. Members of the program: exclusion from authorized strengths

Notwithstanding any other provision of law, members of the program shall not be counted against any prescribed military strengths.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718.)

§ 2126. Members of the program: service credit

Service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205 of title 37.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 501(22), Dec. 12, 1980, 94 Stat. 2908.)

AMENDMENTS

1980—Cl. (2). Pub. L. 96–513 struck out '', other than subsection (a)(7) and (8),'' after ''section 205''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2114 of this title.

§ 2127. Scholarships and financial assistance: payments

(a) The Secretary of Defense may provide for the payment of all educational expenses incurred by a member of the program, including tuition, fees, books, and laboratory expenses. Such payments, however, shall be limited to those educational expenses normally incurred by students at the institution and in the health profession concerned who are not members of the program.

(b) The Secretary of Defense may contract with an accredited civilian educational institution for the payment of tuition and other educational expenses of members of the program authorized by this subchapter. Payment to such institutions may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(c) Payments made under subsection (b) shall not cover any expenses other than those covered by subsection (a).

(d) When the Secretary of Defense determines, under regulations prescribed by the Secretary of Health and Human Services, that an accredited civilian educational institution has increased its total enrollment for the sole purpose of accepting members of the program covered by this subchapter, he may provide under a contract with such an institution for additional payments to cover the portion of the increased costs of the additional enrollment which are not covered by the institution's normal tuition and fees.

(e) A person participating as a member of the program in specialized training shall be paid an annual grant of $15,000 in addition to the stipend under section 2121(d) of this title. The amount of the grant shall be increased annually by the Secretary of Defense, effective July 1 of each year, in the same manner as provided for stipends.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 511(67), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(3), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–189, div. A, title VII, § 725(d)(1), (2), Nov. 29, 1989, 103 Stat. 1479.)

PRIOR PROVISIONS

Prior sections 2128 to 2130 were renumbered sections 16201 to 16203 of this title, respectively.

AMENDMENTS

1989—Pub. L. 101–189, § 725(d)(2), substituted ''Scholarships and financial assistance'' for ''Contracts for scholarships'' in section catchline.

Subsec. (e). Pub. L. 101–189, § 725(d)(1), added subsec. (e).

1987—Subsecs. (b), (d). Pub. L. 100–180 substituted ''subchapter'' for ''chapter''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPORTS ON IMPLEMENTATION AND ON SUCCESS OF FINANCIAL ASSISTANCE PROGRAM

Section 725(e) of Pub. L. 101–189 directed Secretary of Defense, not later than Mar. 1, 1990, to submit to Congress a report describing the manner in which the new authority provided by such section 725 (amending 10 U.S.C. 2120 to 2122, 2124, and 2127) was implemented.

Section 725(f) of Pub. L. 101–189 directed Secretary of Defense, not later than Mar. 1, 1991, to submit to Congress a report evaluating the success of the financial assistance program established by such section 725 and describing the number of participants in the program receiving specialized training payments under 10 U.S.C. 2127(e) and the projected number of officers to be gained, by specialty, as a result of the program for each military department.

SUBCHAPTER II—NURSE OFFICER CANDIDATE ACCESSION PROGRAM

Sec.
2130a. Financial assistance: nurse officer candidates.

PRIOR PROVISIONS

A prior subchapter II heading and analysis consisting of items 2128 to 2130 was repealed and sections 2128 to 2130 of this title were renumbered sections 16201 to 16203 of this title, respectively, by Pub. L. 103–337, div. A, title XVI, §1663(c)(2)–(4)(A), (7)(B), Oct. 5, 1994, 108 Stat. 3007, 3008.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1663(c)(7)(C), Oct. 5, 1994, 108 Stat. 3008, redesignated subchapter III of this chapter as this subchapter.

1991—Pub. L. 101–189, div. A, title VII, §707(a), Nov. 29, 1989, 103 Stat. 1474, added subchapter heading and item 2130a.

§2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on September 30, 1996, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $5,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $2,500.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend of not more than $500 for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

(b) ELIGIBLE STUDENTS.—A person eligible to enter into an agreement under subsection (a) is a person who—

(1) is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title by the Secretary selecting the person;

(2) has completed the second year of an accredited baccalaureate degree program in nursing and has more than 6 months of academic work remaining before graduation; and

(3) meets the qualifications for appointment as an officer of a reserve component of the Army, Navy, or Air Force as set forth in section 591[1] of this title or, in the case of the Public Health Service, section 207 of the Public Health Service Act (42 U.S.C. 209) and the regulations of the Secretary concerned.

(c) REQUIRED AGREEMENT.—The agreement referred to in subsection (a) shall provide that the person executing the agreement agrees to the following:

(1) That the person will complete the nursing degree program described in subsection (b)(1).

(2) That, upon acceptance of the agreement by the Secretary concerned, the person will enlist in a reserve component of an armed force.

(3) That the person will accept an appointment as an officer in the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer in the Air Force or commissioned corps of the Public Health Service, as the case may be, upon graduation from the nursing degree program.

(4) That the person will serve on active duty as such an officer—

(A) for a period of 4 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's fourth year of the nursing degree program; or

(B) for a period of 5 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's third year of the nursing degree program.

(d) REFUND OF PAYMENTS.—(1) A person shall refund any bonus or stipend paid under subsection (a) if the person—

(A) fails to complete a nursing degree program in which the person is enrolled in accordance with the agreement entered into under such subsection;

(B) having completed the nursing degree program, fails to accept an appointment, if tendered, as an officer of the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer of the Air Force or commissioned corps of the Public Health Service; or

(C) fails to complete the period of obligated active service required under the agreement.

[1] See References in Text note below.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or this subsection. This paragraph applies to any case commenced under title 11 after November 29, 1989.

(e) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title VII, § 707(a), Nov. 29, 1989, 103 Stat. 1474; amended Pub. L. 101–510, div. A, title VI, § 613(c), title XIV, § 1484(d)(1), Nov. 5, 1990, 104 Stat. 1577, 1716; Pub. L. 102–190, div. A, title VI, § 612(c)(1), Dec. 5, 1991, 105 Stat. 1376; Pub. L. 102–484, div. A, title VI, § 612(h), Oct. 23, 1992, 106 Stat. 2421; Pub. L. 103–160, div. A, title VI, § 611(a), Nov. 30, 1993, 107 Stat. 1679; Pub. L. 103–337, div. A, title VI, § 612(a), Oct. 5, 1994, 108 Stat. 2783.)

REFERENCES IN TEXT

Section 591 of this title, referred to in subsec. (b)(3), was renumbered section 12201 of this title by Pub. L. 103–337, div. A, title XVI, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990. A new section 591 was added by section 1662(d)(3) of Pub. L. 103–337.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''September 30, 1996'' for ''September 30, 1995''.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''September 30, 1995'' for ''September 30, 1993''.

1992—Subsec. (a)(1). Pub. L. 102–484 substituted ''September 30, 1993'' for ''September 30, 1992''.

1991—Subsec. (a)(1). Pub. L. 102–190 made amendment identical to that made by Pub. L. 101–510, § 613(c)(1). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–510, § 1484(d)(1)(A), substituted ''November 29, 1989,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991''.

Pub. L. 101–510, § 613(c)(1), substituted ''September 30, 1992,'' for ''September 30, 1991,''.

Subsecs. (a)(2), (b)(1). Pub. L. 101–510, § 613(c)(2), inserted ''by the Secretary selecting the person'' after ''section 2102 of this title''.

Subsec. (d)(3). Pub. L. 101–510, § 1484(d)(1)(B), substituted ''November 29, 1989'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991''.

COVERAGE OF PERIOD OF LAPSED AUTHORITY

Section 611(d) of Pub. L. 103–160 provided that:

''(1) In the case of a person described in paragraph (2) who executes an agreement described in paragraph (3) during the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993], the Secretary concerned may treat the agreement for purposes of the accession bonus, monthly stipend, or special pay authorized under the agreement as having been executed and accepted on the first date on which the person would have qualified for such an agreement had the amendments made by this section [amending this section and sections 302d and 302e of Title 37, Pay and Allowances of the Uniformed Services] taken effect on October 1, 1993.

''(2) A person referred to in paragraph (1) is a person described in section 2130a(b) of title 10, United States Code, or section 302d(a)(1) or 302e(b) of title 37, United States Code, who, during the period beginning on October 1, 1993, and ending on the date of the enactment of this Act, would have qualified for an agreement described in paragraph (3) had the amendments made by this section taken effect on October 1, 1993.

''(3) An agreement referred to in this subsection is an agreement with the Secretary concerned that is a condition for the payment of an accession bonus and monthly stipend under section 2130a of title 10, United States Code, an accession bonus under section 302d of title 37, United States Code, or incentive special pay under section 302e of title 37, United States Code.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(5) of title 37, United States Code.''

[For provisions relating to coverage of period of lapsed authority from Oct. 1, 1992, to Oct. 23, 1992, for payment of bonuses or other special pay under this section, see section 612(j)(2) of Pub. L. 102–484, set out as a note under section 301b of Title 37, Pay and Allowances of the Uniformed Services.]

ACCESSION BONUSES FOR CANDIDATES EXECUTING AGREEMENTS DURING 90-DAY PERIOD BEGINNING DECEMBER 5, 1991

Section 612(c)(2) of Pub. L. 102–190 provided that:

''(A) In the case of a person described in subparagraph (B) who executes an agreement under section 2130a of such title [10 U.S.C. 2130a] during the 90-day period beginning on the date of the enactment of this Act [Dec. 5, 1991], the Secretary concerned may treat such agreement as having been executed and accepted for purposes of such section on the first date on which the person would have qualified for such an agreement had the amendment made by paragraph (1) [amending this section] taken effect on October 1, 1991.

''(B) A person referred to in subparagraph (A) is a person who, during the period beginning on October 1, 1991, and ending on the date of the enactment of this Act, would have qualified for an agreement under such section had the amendment made by paragraph (1) taken effect on October 1, 1991.

''(C) For purposes of this paragraph, the term 'Secretary concerned' has the meaning given that term in section 101(8) of such title [10 U.S.C. 101(8)].''

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
2131. Reference to chapter 1606.
[2132 to 2137. Renumbered.]
2138. Savings provision.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1663(b)(7), Oct. 5, 1994, 108 Stat. 3007, added items 2131 and 2138 and struck out former items 2131 to 2138.

1984—Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2564, substituted ''MEMBERS OF THE SELECTED RESERVE'' for ''ENLISTED MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE'' in chapter heading, ''Time limitation for use of entitlement'' for ''Termination of assistance; refund by member'' in item 2133, ''Termination of assistance'' for ''Reports to Congress'' in item 2134, ''Failure to participate satisfactorily; penalties'' for ''Termination of program'' in item 2135, and added items 2136 to 2138.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2005, 2006 of this title; title 20 section 1087vv; title 38 sections 3033, 3221, 3485, 3674, 3680A, 3681, 3684A, 3689, 3695, 3697, 3697A, 5113, 7652, 7653.

§ 2131. Reference to chapter 1606

Provisions of law relating to educational assistance for members of the Selected Reserve under the Montgomery GI Bill program are set forth in chapter 1606 of this title (beginning with section 16131).

(Added Pub. L. 103–337, div. A, title XVI, §1663(b)(7), Oct. 5, 1994, 108 Stat. 3007.)

PRIOR PROVISIONS

Prior section 2131 was renumbered section 16131 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

[§2132. Renumbered §16132]

[§2133. Renumbered §16133]

[§2134. Renumbered §16134]

[§2135. Renumbered §16135]

[§2136. Renumbered §16136]

[§2137. Renumbered §16137]

§2138. Savings provision

A member who entered into an agreement under this chapter before July 1, 1985, shall continue to be eligible for educational assistance in accordance with the terms of such agreement and of this chapter as in effect before such date.

(Added Pub. L. 98–525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2567.)

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

CHAPTER 107—EDUCATIONAL ASSISTANCE FOR PERSONS ENLISTING FOR ACTIVE DUTY

Sec.
2141. Educational assistance program: establishment.
2142. Educational assistance program: eligibility.
2143. Educational assistance: amount.
2144. Subsistence allowance.
2145. Adjustments of amount of educational assistance and of subsistence allowance.
2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance.
2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children.
2148. Duration of entitlement.
2149. Applications for educational assistance.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 227, 2005 of this title; title 20 section 1087vv; title 38 sections 3033, 3222, 3681, 3695, 3697A.

§2141. Educational assistance program: establishment

(a) To encourage enlistments and reenlistments for service on active duty in the armed forces, the Secretary of each military department may establish a program in accordance with this chapter to provide educational assistance to persons enlisting or reenlisting in an armed force under his jurisdiction. The costs of any such program shall be borne by the Department of Defense, and a person participating in any such program may not be required to make any contribution to the program.

(b) The Secretary of Defense shall prescribe regulations for the administration of this chapter. Such regulations shall take account of the differences among the several armed forces.

(c) In this chapter, the term ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 96–342, title IX, §901(a), Sept. 8, 1980, 94 Stat. 1111; amended Pub. L. 100–180, div. A, title XII, §1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, §1233(k)(1), Sept. 29, 1988, 102 Stat. 2058.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 inserted ''the term'' after ''In this chapter,''.

1987—Pub. L. 100–180, which directed that subsec. (c) be amended by inserting ''the term'' after ''In this section,'', could not be executed because that phrase did not appear. See 1988 Amendment note above.

REPAYMENT OF LOANS FOR SERVICE IN THE ARMED FORCES; AUTHORIZATION, CRITERIA, ETC.

Section 902 of Pub. L. 96–342, as amended by Pub. L. 97–86, title IV, §406, Dec. 1, 1981, 95 Stat. 1106; Pub. L. 98–94, title X, §1034, Sept. 24, 1983, 97 Stat. 672; Pub. L. 98–525, title VII, §709, Oct. 19, 1984, 98 Stat. 2572, which provided that the Secretary of Defense could repay any loan made, insured, or guaranteed under part B of the Higher Education Act of 1965, or any loan made under part E of that Act, after Oct. 1, 1975, and further provided for the administration and criteria for such repayment, was repealed by Pub. L. 99–145, title VI, §671(a)(3), Nov. 8, 1985, 99 Stat. 663. See section 2171 et seq. of this title.

EDUCATIONAL ASSISTANCE PILOT PROGRAM; PAYMENT OF MONTHLY CONTRIBUTION BY SECRETARY; MANNER, SCOPE, ETC., OF PAYMENTS

Section 903 of Pub. L. 96–342 provided that:

''(a)(1) As a means of encouraging enlistments and reenlistments in the Armed Forces, the Secretary of Defense, on behalf of any person who enlists or reenlists in the Armed Forces after September 30, 1980, and before October 1, 1981, and who elects or has elected to participate in the Post-Vietnam Era Veterans' Educational Assistance Program provided for under chapter 32 of title 38, United States Code, may pay the monthly contribution otherwise deducted from the military pay of such person. No deduction may be made under section 1622 [now 3222] of title 38, United States Code, from the military pay of any person for any month to the extent that the contribution otherwise required to be made by such person under such section for such month is paid by the Secretary of Defense.

''(2) No payment may be made under this section on behalf of any person for any month before the month in which such person enlisted or reenlisted in the Armed Forces or for any month before October 1980.

''(b) The amount paid by the Secretary of Defense under this section on behalf of any person shall be deposited to the credit of such person in the Post-Vietnam Era Veterans Education Account established under section 1622(a) [now 3222(a)] of title 38, United States Code.

''(c)(1) Except as provided in paragraph (2), the provisions of chapter 32 of title 38, United States Code, shall be applicable to payments made by the Secretary of Defense under this section.

''(2) Notwithstanding the provisions of section 1631(a)(4) [now 3231(a)(4)] of title 38, United States Code, the Secretary of Defense, in the case of any person who enlists or reenlists in the Armed Forces or any officer

who is ordered to active duty with the Armed Forces after September 30, 1980, and before October 1, 1981, or whose active duty obligation with the Armed Forces is extended after September 30, 1980, and before October 1, 1981, and who is a participant in the educational assistance program described in subsection (a), may make monthly payments out of the Post-Vietnam Era Veterans Education Account to the spouse or child of such person to assist such spouse or child in the pursuit of a program of education. Payments under this subsection may be made to the spouse or child of a person participating in such educational assistance program only upon the request of such person and only for such period of time as may be specified by such person. The total amount paid under this subsection in the case of any spouse or child may not exceed the amount credited to such person in the Post-Vietnam Era Veterans Education Account.

''(d)(1) The authority conferred on the Secretary of Defense under this section shall be used by the Secretary only for the purpose of encouraging persons who possess critical military specialties (as determined by the Secretary of Defense) to enter or to remain in the Armed Forces.

''(2) Except as otherwise provided in this section, the Secretary of Defense may offer the benefits of this section to persons eligible therefor for such period as the Secretary determines necessary or appropriate to achieve the purpose of this section.

''(f) As used in this section:

''(1) The term 'program of education' shall have the same meaning as provided in chapter 32 of title 38, United States Code.

''(2) The term 'child' shall have the same meaning as provided in section 101(4) of title 38, United States Code.

''(3) The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.''

AUTHORIZATION OF APPROPRIATIONS; ALLOCATION OF AMOUNTS

Section 904 of Pub. L. 96–342 provided that:

''(a) There is hereby authorized to be appropriated to carry out chapter 107 of title 10, United States Code (as added by section 901), and sections 902 and 903 [set out above] a total of $75,000,000.

''(b) The Secretary of Defense shall equitably allocate the amount appropriated under this section among the educational assistance program provided for under chapter 107 of title 10, United States Code (as added by section 901), the repayment as authorized by section 902 [set out above] of loans made, insured, or guaranteed under part B of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] and of loans made under part E of such Act [20 U.S.C. 1087aa et seq.], and the educational assistance program provided for under section 903 [set out above].''

REPORTS ON EDUCATIONAL ASSISTANCE PROGRAMS; SUBMISSION, CONTENTS, ETC.

Section 905 of Pub. L. 96–342 directed Secretary of Defense to submit to Congress, quarterly for fiscal year 1981, a report on the implementation and operation of the educational assistance program provided for under chapter 107 of this title and of the programs provided for under sections 902 and 903 of Pub. L. 96–342, set out above, and to also submit, not later than Dec. 31, 1981, a report on the extent to which the educational assistance program provided for under chapter 107 of this title, the Post-Vietnam Era Veterans' Educational Assistance Program provided for under chapter 32 of title 38, and the program established under section 902 of Pub. L. 96–342 have encouraged persons to enter or remain in the Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2143 of this title.

§ 2142. Educational assistance program: eligibility

(a)(1) A program of educational assistance established under this chapter shall provide that any person enlisting or reenlisting in an armed force under the jurisdiction of the Secretary of the military department concerned who meets the eligibility requirements established by the Secretary in accordance with subsection (b) shall, subject to paragraph (3), become entitled to educational assistance under section 2143 of this title at the time of such enlistment.

(2) The period of educational assistance to which such a person becomes entitled is one standard academic year (or the equivalent) for each year of the enlistment of such person, up to a maximum of four years. However, if the person is discharged or otherwise released from active duty after completing two years of the term of such enlistment but before completing the full term of such enlistment (or before completing four years of such term, in the case of an enlistment of more than four years), then the period of educational assistance to which the person is entitled is one standard academic year (or the equivalent) for each year of active service of such person during such term. For the purposes of the preceding sentence, a portion of a year of active service shall be rounded to the nearest month and shall be prorated to a standard academic year.

(3)(A) A member who is discharged or otherwise released from active duty before completing two years of active service of an enlistment which is the basis for entitlement to educational assistance under this chapter or who is discharged or otherwise released from active duty under other than honorable conditions is not entitled to educational assistance under this chapter.

(B) Entitlement to educational assistance under this chapter may not be used until a member has completed two years of active service of the enlistment which is the basis for entitlement to such educational assistance.

(b) In establishing requirements for eligibility for an educational assistance program under this chapter, the Secretary concerned shall limit eligibility to persons who—

(1) enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force, or Marine Corps after September 30, 1980, and before October 1, 1981;

(2) are graduates from a secondary school; and

(3) meet such other requirements as the Secretary may consider appropriate for the purposes of this chapter and the needs of the armed forces.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1111.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2143, 2147, 2149 of this title.

§ 2143. Educational assistance: amount

(a) Subject to subsection (b), an educational assistance program established under section 2141 of this title shall provide for payment by

the Secretary concerned of educational expenses incurred for instruction at an accredited institution by a person entitled to such assistance under this chapter. Expenses for which payment may be made under this section include tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction. Payments under this section shall be limited to those educational expenses normally incurred by students at the institution involved.

(b)(1) The Secretary concerned shall establish the amount of educational assistance for a standard academic year (or the equivalent) to which a person becomes entitled under this chapter at the time of an enlistment described in section 2142 of this title. Depending on the needs of the service, different amounts may be established for different categories of persons or enlistments. The amount of educational assistance to which any person is entitled shall be adjusted in accordance with section 2145 of this title.

(2) The amount of educational assistance which may be provided to any person for a standard academic year (or the equivalent) may not exceed $1,200, adjusted in accordance with section 2145 of this title.

(c) In this section, the term ''accredited institution'' means a civilian college or university or a trade, technical, or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands) that provides education at the postsecondary level and that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education.

(Added Pub. L. 96–342, title IX, §901(a), Sept. 8, 1980, 94 Stat. 1112; amended Pub. L. 100–180, div. A, title XII, §1231(18)(A), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2142, 2145, 2146 of this title.

§2144. Subsistence allowance

(a) Subject to subsection (b), a person entitled to educational assistance under this chapter is entitled to receive a monthly subsistence allowance during any period for which educational assistance is provided such person. The amount of a subsistence allowance under this section is $300 per month, adjusted in accordance with section 2145 of this title, in the case of a person pursuing a course of instruction on a full-time basis and is one-half of such amount (as so adjusted) in the case of a person pursuing a course of instruction on less than a full-time basis.

(b) The number of months for which a subsistence allowance may be provided to any person under this section is computed on the basis of nine months for each standard academic year of educational assistance to which such person is entitled.

(c) For purposes of subsection (a), a person shall be considered to be pursuing a course of instruction on a full-time basis if the person is enrolled in twelve or more semester hours of instruction (or the equivalent, as determined by Secretary concerned).

(Added Pub. L. 96–342, title IX, §901(a), Sept. 8, 1980, 94 Stat. 1112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2145, 2146, 2147 of this title.

§2145. Adjustments of amount of educational assistance and of subsistence allowance

(a) Once each year, the Secretary of Defense shall adjust the amount of educational assistance which may be provided to any person in any standard academic year under section 2143 of this title, and the amount of the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis, in a manner consistent with the change over the preceding twelve-month period in the average actual cost of attendance at public institutions of higher education.

(b) In this section, the term ''actual cost of attendance'' has the meaning given the term ''cost of attendance'' by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(Added Pub. L. 96–342, title IX, §901(a), Sept. 8, 1980, 94 Stat. 1113; amended Pub. L. 100–180, div. A, title XII, §1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 103–35, title II, §201(c)(2), May 31, 1993, 107 Stat. 98.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–35 substituted ''has the meaning given the term 'cost of attendance' by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*)'' for ''means the actual cost of attendance as determined by the Secretary of Education pursuant to section 411(a)(2)(B)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1070a(a)(2)(B)(iv))''.

1987—Subsec. (b). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2143, 2144 of this title.

§2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance

(a) A member who is entitled to educational assistance under this chapter and who reenlists at the end of the enlistment which established such entitlement may, at the time of such reenlistment, elect to receive a lump-sum payment computed under subsection (b) in lieu of receiving such educational assistance. An election to receive such a lump-sum payment is irrevocable.

(b) The amount of a lump-sum payment under subsection (a) is 60 percent of the sum of—

(1) the product of (A) the rate for educational assistance under section 2143(b) of this title applicable to such member which is in effect at the time of such reenlistment, and (B) the number of standard academic years of entitlement of such member to such assistance; and

(2) the product of (A) the rate for the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis at the time of such reenlistment, and (B) the number of months of entitlement of such member to such allowance.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113.)

§ 2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children

(a)(1)(A) A person who is entitled to educational assistance under section 2142 of this title and who reenlisted in an armed force at any time after the end of the enlistment which established such entitlement may at any time after such reenlistment elect to transfer all or any part of such entitlement to the spouse or dependent child of such person.

(B) The Secretary of the Navy may authorize a member of the Navy or Marine Corps who is entitled to educational assistance under section 2142 of this title and whose enlistment that established such entitlement was the member's second reenlistment as a member of the armed forces to transfer all or part of such entitlement to the spouse or dependent child of such member after the completion of four years of active service of that second reenlistment if that reenlistment was for a period of at least six years.

(C) A transfer under this paragraph may be revoked at any time by the person making the transfer.

(2) If a person described in paragraph (1) dies before making an election authorized by such paragraph but has never made an election not to transfer such entitlement, any unused entitlement of such person shall be automatically transferred to such person's surviving spouse or (if there is no eligible surviving spouse) to such person's dependent children. A surviving spouse to whom entitlement to educational assistance is transferred under this paragraph may elect to transfer such entitlement to the dependent children of the person whose service established such entitlement.

(3) Any transfer of entitlement under this subsection shall be made in accordance with regulations prescribed by the Secretary of the military department concerned.

(b) A spouse or surviving spouse or a dependent child to whom entitlement is transferred under subsection (a) is entitled to educational assistance under this chapter in the same manner and at the same rate as the person from whom the entitlement was transferred.

(c) The total amount of educational assistance available to a person entitled to educational assistance under section 2142 of this title and to the person's spouse, surviving spouse, and dependent children is the amount of educational assistance to which the person is entitled. If more than one person is being provided educational assistance for the same period by virtue of the entitlement of the same person, the subsistence allowance authorized by section 2144 of this title shall be divided in such manner as the person may specify or (if the person fails to specify) as the Secretary concerned may prescribe.

(d) In this section:

(1) The term ''dependent child'' has the meaning given the term ''dependent'' in section 1072(2)(D) of this title.

(2) The term ''surviving spouse'' means a widow or widower who is not remarried.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended Pub. L. 97–22, § 10(b)(3), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title VI, § 673, Nov. 8, 1985, 99 Stat. 664; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (d)(1), (2). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Subsec. (a)(1). Pub. L. 99–145 designated existing first sentence as subpar. (A), added subpar. (B), and incorporated existing second sentence as subpar. (C).

1981—Subsec. (d)(1). Pub. L. 97–22 substituted ''section 1072(2)(D) of this title'' for ''section 1072(2)(E) of this title''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2149 of this title.

§ 2148. Duration of entitlement

The entitlement of any person to educational assistance under this chapter expires at the end of the ten-year period beginning on the date of the retirement or discharge or other separation from active duty of the person upon whose service such entitlement is based. In the case of a member entitled to educational assistance under this chapter who dies while on active duty and whose entitlement is transferred to a spouse or dependent child, such entitlement expires at the end of the ten-year period beginning on the date of such member's death.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

§ 2149. Applications for educational assistance

To receive educational assistance benefits under this chapter, a person entitled to such assistance under section 2142 or 2147 of this title shall submit an application for such assistance to the Secretary concerned in such form and manner as the Secretary concerned may prescribe.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

CHAPTER 108—DEPARTMENT OF DEFENSE SCHOOLS

Sec.
2161. Defense Intelligence School: master of science of strategic intelligence.
2162. Preparation of budget requests for operation of professional military education schools.
2163. National Defense University: masters of science in national security strategy and in national resource strategy.

Sec.
2164. Department of Defense domestic dependent elementary and secondary schools.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title III, §351(b), Oct. 5, 1994, 108 Stat. 2730, added item 2164.

1993—Pub. L. 103–160, div. A, title IX, §922(b), Nov. 30, 1993, 107 Stat. 1731, added item 2163.

1990—Pub. L. 101–510, div. A, title IX, §911(b)(1), (2), Nov. 5, 1990, 104 Stat. 1626, substituted ''DEPARTMENT OF DEFENSE SCHOOLS'' for ''GRANTING OF ADVANCED DEGREES AT DEPARTMENT OF DEFENSE SCHOOLS'' as chapter heading and added item 2162.

SENSE OF CONGRESS ON GRADE OF HEADS OF SENIOR PROFESSIONAL MILITARY EDUCATION SCHOOLS

Pub. L. 103–337, div. A, title IX, §914, Oct. 5, 1994, 108 Stat. 2829, provided that: ''It is the sense of Congress that an officer serving in a position as the head of one of the senior professional military education schools of the Department of Defense (or of the separate military departments) should, while so serving, hold a grade not less than the grade (or its equivalent) held by the officer serving in that position on the date of the enactment of this Act [Oct. 5, 1994].''

MILITARY DEPARTMENT AFFILIATION OF WAR COLLEGE STUDENTS

Pub. L. 103–335, title VIII, §8108A, Sept. 30, 1994, 108 Stat. 2646, provided that: ''Notwithstanding any other provision of law, for resident classes entering the war colleges after September 30, 1996, the Department of Defense shall require that not less than 20 percent of the total of United States military students at each war college shall be from military departments other than the hosting military department: *Provided*, That each military department will recognize the attendance at a sister military department war college as the equivalent of attendance at its own war college for promotion and advancement of personnel.''

AUTHORITY FOR MILITARY SCHOOL FACULTY MEMBERS AND STUDENTS TO ACCEPT HONORARIA FOR CERTAIN SCHOLARLY AND ACADEMIC ACTIVITIES

Pub. L. 102–484, div. A, title V, §542, Oct. 23, 1992, 106 Stat. 2413, provided that:

''(a) AUTHORITY TO ACCEPT HONORARIA.—Notwithstanding the prohibition on the acceptance of honoraria contained in section 501(b) of the Ethics in Government Act of 1978 [5 App. U.S.C.], a faculty member or a student at a Department of Defense school specified under subsection (d) may accept an honorarium for an appearance, a speech, or an article published in a bona fide publication if such an appearance, speech, or article is customary for scholarly or academic activities normally associated with institutions of higher learning and if—

''(1) the purpose of the appearance, or the subject of the speech or article, does not relate primarily to the responsibilities, policies, or programs of the school at which the individual is a faculty member or student;

''(2) the appearance, speech, or article (including the individual's time in specific preparation for the appearance, speech, or article) does not involve the use of Government time, Government property, or other resources of the Government or the use of nonpublic Government information;

''(3) the reason for which the honorarium is paid is unrelated to the individual's duties or status as a member of the Armed Forces or employee of the Government or as a faculty member or student at a school specified in subsection (d); and

''(4) the person offering the honorarium has no interests that may be substantially affected by the performance or nonperformance of the individual's duties as a member of the Armed Forces or an employee of the Government or as a faculty member or student at a school specified in subsection (d).

''(b) SPECIAL RULE CONCERNING SUBJECT MATTER.—For purposes of subsection (a)(1), an appearance, speech, or article on a subject matter that is within an individual's academic or military specialty, in the case of a faculty member, or an individual's course of academic study, in the case of a student, shall not be considered to relate primarily to the responsibilities, policies, or programs of the school at which the individual is a faculty member or student if the preparation and presentation of the particular appearance, speech, or article is clearly outside of the individual's duties.

''(c) NONCOVERAGE OF HIGHLY PAID FACULTY MEMBERS.—Subsection (a) shall not apply to acceptance of an honorarium by a faculty member who is employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5, United States Code (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for Level V of the Executive Schedule.

''(d) COVERED SCHOOLS.—(1) This section applies with respect to faculty members and students at any of the service academies and at any professional military school operated by the Department of Defense that is designated by the Chairman of the Joint Chiefs of Staff to be covered by this section.

''(2) For purposes of paragraph (1), the term 'service academies' means—

''(A) the United States Military Academy;

''(B) the United States Naval Academy; and

''(C) the United States Air Force Academy.

''(e) HONORARIUM DEFINED.—For purposes of this section, the term 'honorarium' means a payment of money or anything of value for an appearance, a speech, or an article (including a series of appearances, speeches, or articles).

''(f) MAXIMUM AMOUNT OF HONORARIUM.—The amount of any honorarium accepted under this section shall not exceed the usual and customary fee for the appearance, speech, or article for which the honorarium is paid, up to a maximum of $2,000.

''(g) EFFECTIVE DATE.—This section shall apply with respect to any honorarium for an appearance or speech made, or an article published, on or after the date of the enactment of this Act [Oct. 23, 1992].''

§2161. Defense Intelligence School: master of science of strategic intelligence

Under regulations prescribed by the Secretary of Defense, the Commandant of the Defense Intelligence School may, upon recommendation by the faculty of such school, confer the degree of master of science of strategic intelligence upon graduates of the school who have fulfilled the requirements for that degree.

(Added Pub. L. 96–450, title IV, §406(a), Oct. 14, 1980, 94 Stat. 1980.)

§2162. Preparation of budget requests for operation of professional military education schools

(a) UNIFORM COST ACCOUNTING.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall promulgate a uniform cost accounting system for use by the Secretaries of the military departments in preparing budget requests for the operation of professional military education schools.

(b) PREPARATION OF BUDGET REQUESTS.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the operation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

(c) COMPARISON OF BUDGET REQUESTS.—Materials prepared in support of the budget request for a professional military education school shall describe whether the amount requested for that school is comparable to the amounts requested for other professional military education schools, taking into consideration the size and activities of the schools.

(d) DEFINITIONS.—In this section:

(1) The term ''professional military education school'' means—

(A) the National Defense University;

(B) the Army War College;

(C) the College of Naval Warfare;

(D) the Air War College;

(E) the United States Army Command and General Staff College;

(F) the College of Naval Command and Staff;

(G) the Air Command and Staff College; or

(H) the Marine Corps Command and Staff College.

(2) The term ''National Defense University'' means the National War College, the Armed Forces Staff College, and the Industrial College of the Armed Forces.

(Added Pub. L. 101–510, div. A, title IX, § 911(a), Nov. 5, 1990, 104 Stat. 1625.)

EFFECTIVE DATE

Section 911(b)[(c)] of Pub. L. 101–510 provided that: ''Section 2162 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1991.''

§ 2163. National Defense University: masters of science in national security strategy and in national resource strategy

(a) NATIONAL WAR COLLEGE DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the National War College, may confer the degree of master of science of national security strategy upon graduates of the National War College who fulfill the requirements for the degree.

(b) ICAF DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the Industrial College of the Armed Forces, may confer the degree of master of science of national resource strategy upon graduates of the Industrial College of the Armed Forces who fulfill the requirements for the degree.

(c) REGULATIONS.—The authority provided by subsections (a) and (b) shall be exercised under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 103–160, div. A, title IX, § 922(a), Nov. 30, 1993, 107 Stat. 1730.)

§ 2164. Department of Defense domestic dependent elementary and secondary schools

(a) AUTHORITY OF SECRETARY.—If the Secretary of Defense makes a determination that appropriate educational programs are not available through a local educational agency for dependents of members of the armed forces and dependents of civilian employees of the Federal Government residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States), the Secretary may enter into arrangements to provide for the elementary or secondary education of the dependents of such members of the armed forces and, to the extent authorized in subsection (c), the dependents of such civilian employees. The Secretary may, at the discretion of the Secretary, permit dependents of members of the armed forces and, to the extent provided in subsection (c), dependents of civilian employees of the Federal Government residing in a territory, commonwealth, or possession of the United States but not on a military installation, to enroll in an educational program provided by the Secretary pursuant to this subsection.

(b) FACTORS FOR SECRETARY TO CONSIDER.—(1) Factors to be considered by the Secretary of Defense in making a determination under subsection (a) shall include the following:

(A) The extent to which such dependents are eligible for free public education in the local area adjacent to the military installation.

(B) The extent to which the local educational agency is able to provide an appropriate educational program for such dependents.

(2) For purposes of paragraph (1)(B), an appropriate educational program is a program that, as determined by the Secretary, is comparable to a program of free public education provided for children by the following local educational agencies:

(A) In the case of a military installation located in a State (other than an installation referred to in subparagraph (B)), local educational agencies in the State that are similar to the local educational agency referred to in paragraph (1)(B).

(B) In the case of a military installation with boundaries contiguous to two or more States, local educational agencies in the contiguous States that are similar to the local educational agency referred to in paragraph (1)(B).

(C) In the case of a military installation located in a territory, commonwealth, or possession, the District of Columbia public schools, except that an educational program determined comparable under this subparagraph may be considered appropriate for the purposes of paragraph (1)(B) only if the program is conducted in the English language.

(c) ELIGIBILITY OF DEPENDENTS OF FEDERAL EMPLOYEES.—(1) A dependent of a Federal employee residing in permanent living quarters on a military installation at any time during the school year may enroll in an educational program provided by the Secretary of Defense pursuant to subsection (a) for dependents residing on such installation.

(2)(A) Except as provided in subparagraphs (B) and (C), a dependent of a Federal employee who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) and who is not residing on a military installation may be enrolled in the program for not more than five consecutive school years.

(B) A dependent referred to in subparagraph (A) may be enrolled in the program for more than five consecutive school years if the Secretary determines that, in the interest of the dependent's educational well-being, there is good cause to extend the enrollment for more than the five-year period described in such subparagraph. Any such extension may be made for only one school year at a time.

(C) Subparagraph (A) shall not apply to an individual who is a dependent of a Federal employee in the excepted service (as defined in section 2103 of title 5) and who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

(3) A dependent of a Federal employee may continue enrollment in a program under this subsection for the remainder of a school year notwithstanding a change during such school year in the status of the Federal employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program. The preceding sentence does not limit the authority of the Secretary to remove the dependent from enrollment in the program at any time for good cause determined by the Secretary.

(d) SCHOOL BOARDS.—(1) The Secretary of Defense shall provide for the establishment of a school board for Department of Defense elementary and secondary schools established at each military installation under this section.

(2) The school board shall be composed of the number of members, not fewer than three, prescribed by the Secretary.

(3) The parents of the students attending the school shall elect the school board in accordance with procedures which the Secretary shall prescribe.

(4)(A) A school board elected for a school under this subsection may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the school, except that the Secretary may issue any directive that the Secretary considers necessary for the effective operation of the school or the entire school system.

(B) A directive referred to in subparagraph (A) shall, to the maximum extent practicable, be issued only after the Secretary consults with the appropriate school boards elected under this subsection. The Secretary shall establish a process by which a school board or school administrative officials may formally appeal the directive to the Secretary of Defense.

(5) Meetings conducted by the school board shall be open to the public, except as provided in paragraph (6).

(6) A school board need not comply with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), but may close meetings in accordance with such Act.

(e) ADMINISTRATION AND STAFF.—(1) The Secretary of Defense may enter into such arrangements as may be necessary to provide educational programs at the school.

(2) The Secretary may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(A) establish positions for civilian employees in schools established under this section;

(B) appoint individuals to such positions; and

(C) fix the compensation of such individuals for service in such positions.

(3)(A) Except as provided in subparagraph (B), in fixing the compensation of employees appointed for a school pursuant to paragraph (2), the Secretary shall consider—

(i) the compensation of comparable employees of the local educational agency in the capital of the State where the military installation is located;

(ii) the compensation of comparable employees in the local educational agency that provides public education to students who reside adjacent to the military installation; and

(iii) the average compensation for similar positions in not more than three other local educational agencies in the State in which the military installation is located.

(B) In fixing the compensation of employees in schools established in the territories, commonwealths, and possessions pursuant to the authority of this section, the Secretary shall determine the level of compensation required to attract qualified employees. For employees in such schools, the Secretary, without regard to the provisions of title 5, may provide for the tenure, leave, hours of work, and other incidents of employment to be similar to that provided for comparable positions in the public schools of the District of Columbia. For purposes of the first sentence, a school established before the effective date of this section pursuant to authority similar to the authority in this section shall be considered to have been established pursuant to the authority of this section.

(f) SUBSTANTIVE AND PROCEDURAL RIGHTS AND PROTECTIONS FOR CHILDREN.—(1) The Secretary shall provide the following substantive rights, protections, and procedural safeguards (including due process procedures) in the educational programs provided for under this section:

(A) In the case of children with disabilities aged 3 to 5, inclusive, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with disabilities aged 3 to 5, inclusive, under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(B) In the case of infants and toddlers with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to infants and toddlers with disabilities under part H of such Act (20 U.S.C. 1471 et seq.).

(C) In the case of all other children with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with dis-

abilities who are 3 to 5 years old under part B of such Act.

(2) Paragraph (1) may not be construed as diminishing for children with disabilities enrolled in day educational programs provided for under this section the extent of substantive rights, protections, and procedural safeguards that were available under section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)) to children with disabilities as of October 7, 1991.

(3) In this subsection:

(A) The term ''children with disabilities'' has the meaning given the term in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)).

(B) The term ''children with disabilities aged 3 to 5, inclusive'' means such term as used in such Act (20 U.S.C. 1400 et seq.).

(C) The term ''infants and toddlers with disabilities'' has the meaning given the term in section 672(1) of such Act (20 U.S.C. 1472(1)).

(g) REIMBURSEMENT.—When the Secretary of Defense provides educational services under this section to an individual who is a dependent of an employee of a Federal agency outside the Department of Defense, the head of the other Federal agency shall, upon request of the Secretary of Defense, reimburse the Secretary for those services at rates routinely prescribed by the Secretary for those services. Any payments received by the Secretary under this subsection shall be credited to the account designated by the Secretary for the operation of educational programs under this section.

(Added Pub. L. 103–337, div. A, title III, § 351(a), Oct. 5, 1994, 108 Stat. 2727.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(6), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this section, referred to in subsec. (e)(3)(B), is the date of enactment of Pub. L. 103–337 which was approved Oct. 5, 1994.

The Individuals with Disabilities Education Act, referred to in subsec. (f)(1), (3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. Parts B and H of the Act are classified generally to subchapters II (§ 1411 et seq.) and VIII (§ 1471 et seq.), respectively, of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)), referred to in subsec. (f)(2), was repealed by Pub. L. 103–382, title III, § 331(b), Oct. 20, 1994, 108 Stat. 3965.

SAVINGS PROVISION

Section 351(c) of Pub. L. 103–337 provided that: ''Nothing in section 2164 of title 10, United States Code, as added by subsection (a), shall be construed as affecting the rights in existence on the date of the enactment of this Act [Oct. 5, 1994] of an employee of any school established under such section (or any other provision of law enacted before the date of the enactment of this Act that established a similar school) to negotiate or bargain collectively with the Secretary with respect to wages, hours, and other terms and conditions of employment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2605 of this title.

CHAPTER 109—EDUCATIONAL LOAN REPAYMENT PROGRAMS

Sec.
2171. Education loan repayment program: enlisted members on active duty in specified military specialties.
[2172. Renumbered.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(13), Oct. 5, 1994, 108 Stat. 3014, added item 2171 and struck out former items 2171 ''General educational loan repayment program'' and 2172 ''Education loans for certain health professionals who serve in the Selected Reserve''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 227 of this title; title 38 section 3033.

§ 2171. Education loan repayment program: enlisted members on active duty in specified military specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.); or

(B) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed on active duty as an enlisted member in a military specialty specified by the Secretary.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 33⅓ percent or $1,500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 16301 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 16301(a) of this title.

(Added Pub. L. 99–145, title VI, § 671(a)(1), Nov. 8, 1985, 99 Stat. 661; amended Pub. L. 103–337, div. A, title XVI, § 1663(e), Oct. 5, 1994, 108 Stat. 3009.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Higher Education Act of 1965 are classified to parts B (§1071 et seq.) and D (§1087aa et seq.) of subchapter IV of chapter 28 of Title 20, Education, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1994—Pub. L. 103–337, §1663(e)(6), substituted ''Education loan repayment program: enlisted members on active duty in specified military specialties'' for ''General educational loan repayment program'' as section catchline.

Subsec. (a)(1)(B). Pub. L. 103–337, §1663(e)(1), struck out ''or'' after ''(B)''.

Subsec. (a)(2). Pub. L. 103–337, §1663(e)(2), substituted ''case of any person for—

''(A) service performed—

''(i) as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force; and

''(ii) in a reserve component and military specialty specified by the Secretary of Defense; or

''(B) service performed''

and struck out at end ''In the case of service described in clause (A) of the first sentence of this paragraph, the Secretary may repay a loan described in paragraph (1) only if the person to whom the loan was made performed such service after the loan was made.''

Subsec. (b). Pub. L. 103–337, §1663(e)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The portion or amount of a loan that may be repaid under subsection (a) is—

''(1) 15 percent or $500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(A); or

''(2) 33⅓ percent or $1,500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(B).''

Subsec. (e). Pub. L. 103–337, §1663(e)(4), substituted ''A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section)'' for ''Any individual who transfers from service described in clause (A) or (B) of subsection (a)(2) to service described in the other clause of such subsection''.

Subsec. (f). Pub. L. 103–337, §1663(e)(5), inserted ''and section 16301 of this title'' after ''this section'' and ''and section 16301(a) of this title'' after ''subsection (a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section 671(b)(1) of Pub. L. 99–145 provided that: ''The authority provided under section 2171 of title 10, United States Code, as added by subsection (a), shall apply only—

''(A) in the case of persons who enlist or reenlist in the Selected Reserve of the Ready Reserve of an Armed Force or enlist or reenlist for service on active duty after September 30, 1980;

''(B) with respect to service performed after that date; and

''(C) with respect to loans made after October 1, 1975.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16301 of this title.

[§2172. Renumbered §16302]

CHAPTER 110—EDUCATIONAL ASSISTANCE FOR MEMBERS HELD AS CAPTIVES AND THEIR DEPENDENTS

Sec.
2181. Definitions.
2182. Educational assistance: dependents of captives.
2183. Educational assistance: former captives.
2184. Termination of assistance.
2185. Programs to be consistent with programs administered by the Department of Veterans Affairs.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(5), Nov. 5, 1990, 104 Stat. 1718, inserted ''administered by'' after ''programs'' in item 2185.

1989—Pub. L. 101–189, div. A, title XVI, §1621(a)(7)(B), Nov. 29, 1989, 103 Stat. 1603, substituted ''programs the Department of Veterans Affairs'' for ''programs administered by the Veterans' Administration'' in item 2185.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 37 section 1013.

§2181. Definitions

In this chapter:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, §806(d)(1), Aug. 27, 1986, 100 Stat. 887, and Pub. L. 100–26, §7(k)(6), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Pub. L. 100–26, substituted ''The terms 'captive' '' for '' 'Captive' '' in par. (1) and ''The term 'dependent' '' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE

Section 806(d)(3) of Pub. L. 99–399 provided that: ''Chapter 110 of title 10, United States Code, as added by paragraph (1), shall apply with respect to persons whose captive status begins after January 21, 1981.''

§2182. Educational assistance: dependents of captives

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) a dependent of a person who is in a captive status for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;

(2) tuition;

(3) fees;

(4) supplies;

(5) books;

(6) equipment; and

(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a dependent of a person who is in a captive status for education or training that occurs—

(1) after that person is in a captive status for not less than 90 days; and

(2) on or before—

(A) the end of any semester or quarter (as appropriate) that begins before the date on which the captive status of that person terminates;

(B) the earlier of the end of any course that began before such date or the end of the 16-week period following that date if the educational or training institution is not operated on a semester or quarter system; or

(C) a date specified by the Secretary concerned in order to respond to special circumstances.

(c) If a person in a captive status or a former captive dies and the death is incident to the captivity, payments shall be available under this section for a dependent of that person for education or training that occurs after the date of the death of that person.

(d) The provisions of this section shall not apply to any dependent who is eligible for assistance under chapter 35 of title 38 or similar assistance under any other provision of law.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887.)

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 2183. Educational assistance: former captives

(a) In order to respond to special circumstances, the Secretary concerned may pay (by advancement or reimbursement) a person who is a former captive for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;
(2) tuition;
(3) fees;
(4) supplies;
(5) books;
(6) equipment; and
(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a person who is a former captive for education or training that occurs—

(1) after the termination of the status of that person as a captive; and

(2) on or before—

(A) the end of any semester or quarter (as appropriate) that begins before the end of the 10-year period beginning on the date on which the status of that person as a captive terminates; or

(B) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course that began before such date or the end of the 16-week period following that date.

(c) Payments shall be available under this section only to the extent that such payments are not otherwise authorized by law.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888.)

§ 2184. Termination of assistance

Assistance under this chapter—

(1) shall be discontinued for any person whose conduct or progress is unsatisfactory under standards consistent with those established under section 3524 of title 38; and

(2) may not be provided for any person for more than 45 months (or the equivalent in other than full-time education or training).

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended Pub. L. 103–337, div. A, title X, § 1070(e)(7), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–337 substituted ''3524'' for ''1724''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2182, 2183 of this title.

§ 2185. Programs to be consistent with programs administered by the Department of Veterans Affairs

Regulations prescribed to carry out this chapter shall provide that the programs under this chapter shall be consistent with the educational assistance programs under chapters 35 and 36 of title 38.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(7)(A), Nov. 29, 1989, 103 Stat. 1603.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''the Department of Veterans Affairs'' for ''the Veterans' Administration'' in section catchline.

CHAPTER 111—SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Sec.
2191. Graduate fellowships.
2192. Science, mathematics, and engineering education.
2193. Science and mathematics education improvement program.
2194. Education partnerships.
2195. Department of Defense cooperative education programs.
2196. Manufacturing engineering education: grant program.
2197. Manufacturing experts in the classroom.
2198. Management training program in Japanese language and culture.
2199. Definitions.

AMENDMENTS

1992—Pub. L. 102–484, div. D, title XLII, § 4238(b)(2), Oct. 23, 1992, 106 Stat. 2694, substituted ''experts'' for ''managers'' in item 2197.

1991—Pub. L. 102–190, div. A, title VIII, §§ 825(a)(2), 828(b), Dec. 5, 1991, 105 Stat. 1442, 1444, struck out item 2196 ''Definition'' and added items 2196 to 2199.

1990—Pub. L. 101–510, div. A, title II, § 247(a)(2)(A), (C), Nov. 5, 1990, 104 Stat. 1523, substituted ''SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION'' for ''NATIONAL DEFENSE SCIENCE AND ENGINEERING GRADUATE FELLOWSHIPS'' in chapter heading and added items 2192 to 2196.

§ 2191. Graduate fellowships

(a) The Secretary of Defense shall prescribe regulations providing for the award of fellow-

ships to citizens and nationals of the United States who agree to pursue graduate degrees in science, engineering, or other fields of study designated by the Secretary to be of priority interest to the Department of Defense.

(b) A fellowship awarded pursuant to regulations prescribed under subsection (a) shall be known as a ''National Defense Science and Engineering Graduate Fellowship''.

(c) National Defense Science and Engineering Graduate Fellowships shall be awarded solely on the basis of academic ability. The Secretary shall take all appropriate actions to encourage applications for such fellowships of persons who are members of groups (including minority groups, women, and disabled persons) which historically have been underrepresented in science and technology fields. Recipients shall be selected on the basis of a nationwide competition. The award of a fellowship under this section may not be predicated on the geographic region in which the recipient lives or the geographic region in which the recipient will pursue an advanced degree.

(d) The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the maximum amount that may be awarded to an individual during an academic year.

(Added Pub. L. 101–189, div. A, title VIII, §843(d)(1), Nov. 29, 1989, 103 Stat. 1516.)

§2192. Science, mathematics, and engineering education

(a) The Secretary of Defense, in consultation with the Secretary of Education, shall, on a continuing basis—

(1) identify actions which the Department of Defense may take to improve education in the scientific, mathematics, and engineering skills necessary to meet the long-term national defense needs of the United States for personnel proficient in such skills; and

(2) establish and conduct programs to carry out such actions.

(b) The Secretary shall designate an individual within the Office of the Secretary of Defense to advise and assist the Secretary regarding matters relating to science, mathematics, and engineering education and training.

(Added Pub. L. 101–510, div. A, title II, §247(a)(1), Nov. 5, 1990, 104 Stat. 1521.)

DEPARTMENT OF DEFENSE SUPPORT FOR SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Pub. L. 102–190, div. A, title VIII, §829, Dec. 5, 1991, 105 Stat. 1444, provided that:

''(a) SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION SUPPORT MASTER PLAN.—(1) At the same time that the President submits to Congress the budget for each of fiscal years 1993 through 1997 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a master plan for activities by the Department of Defense during the next fiscal year to support education in science, mathematics, and engineering at all levels of education in the United States. Each such plan shall be developed in consultation with the Secretary of Education.

''(2) The activities provided for in the plan submitted under paragraph (1) for any fiscal year shall contribute to the achievement of the national education goals stated in the Report of the Committee on Education and Human Resources of the Federal Coordinating Council for Science, Engineering, and Technology that was submitted to Congress with the submission of the budget for fiscal year 1992.

''(3) Each such plan shall provide the basis for the Secretaries of the military departments and the heads of the Defense Agencies of the Department of Defense—

''(A) to define the programs of the military departments and Defense Agencies to support the achievement of the goals referred to in paragraph (2); and

''(B) to allocate resources for such programs.

''(b) CONTENT OF PLAN.—The plan under subsection (a) for a fiscal year shall include the following:

''(1) A description of each action for the improvement of scientific, mathematics, and engineering education identified by the Secretary of Defense under sections 2191 through 2195 of title 10, United States Code, for such fiscal year and the funds that are provided in the budget for such fiscal year for such action.

''(2) The long-range goals and priorities of the Department of Defense for improving the Department's support for science, mathematics, and engineering education programs, including—

''(A) education programs within, or directly supported by, the Department of Defense;

''(B) education programs in other departments and agencies of the Federal Government;

''(C) education programs at elementary, secondary, and postsecondary educational institutions; and

''(D) other programs within or supported by the Department of Defense that are potentially capable of assisting local education agencies to integrate advanced technology into their classrooms that will improve student learning with science, mathematics, and engineering.

''(c) ROLE OF DIRECTOR, DEFENSE RESEARCH AND ENGINEERING.—Subject to the authority, direction, and control of the Secretary of Defense, the Director of Defense Research and Engineering shall perform the duties of the Secretary under this section.

''(d) IMPLEMENTATION REPORT.—Not later than March 15, 1992, the Secretary of Defense shall submit to Congress a report on steps taken by the Department of Defense to encourage science, mathematics, and engineering teachers returning to the United States from teaching assignments in the Department of Defense Overseas Dependents School System to continue to teach in those subject areas in local education agencies and in military impact aid schools throughout the United States.''

§2193. Science and mathematics education improvement program

(a)(1) The Secretary of Defense may, in accordance with the provisions of this subsection, carry out a program for awarding grants to students who have been accepted for enrollment in, or who are enrolled in, an institution of higher education as undergraduate or graduate students in scientific and engineering disciplines critical to the national security functions of the Department of Defense.

(2) Grant proceeds shall be disbursed on behalf of students awarded grants under this subsection to the institutions of higher education at which the students are enrolled. No grant proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher education.

(3) The amount of a grant awarded a student under this subsection may not exceed the student's cost of attendance.

(4) The amount of a grant awarded a student under this subsection shall not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but shall be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(5) The Secretary shall give priority to awarding grants under this subsection in a manner likely to stimulate the interest of women and members of minority groups in pursuing scientific and engineering careers. The Secretary may consider the financial need of applicants in making awards in accordance with such priority.

(b) The Secretary of Defense, in coordination with the Secretary of Education, may establish programs for the purpose of improving the mathematics and scientific knowledge and skills of elementary and secondary school students and faculty members.

(c) In this section:

(1) The term ''institution of higher education'' has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(2) The term ''cost of attendance'' has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521.)

§ 2194. Education partnerships

(a) The Secretary of Defense shall authorize the director of each defense laboratory to enter into one or more education partnership agreements with educational institutions in the United States for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education. The educational institutions referred to in the preceding sentence are local educational agency, colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, and engineering education.

(b) Under a partnership agreement entered into with an educational institution under this section, the director of a defense laboratory may provide assistance to the educational institution by—

(1) loaning defense laboratory equipment to the institution;

(2) transferring to the institution defense laboratory equipment determined by the director to be surplus;

(3) making laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) involving faculty and students of the institution in defense laboratory research projects;

(5) cooperating with the institution in developing a program under which students may be given academic credit for work on defense laboratory research projects; and

(6) providing academic and career advice and assistance to students of the institution.

(c) The Secretary of Defense shall ensure that the director of each defense laboratory shall give a priority under this section to entering into an education partnership agreement with one or more historically Black colleges and universities and other minority institutions referred to in paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)).

(d) The Secretary of Defense shall ensure that, in entering into education partnership agreements under this section, the director of a defense laboratory gives a priority to providing assistance to educational institutions serving women, members of minority groups, and other groups of individuals who traditionally are involved in the engineering and science professions in disproportionately low numbers.

(e) In this section, the term ''local educational agency'' has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).[1]

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1522; amended Pub. L. 103–382, title III, § 391(b)(4), Oct. 20, 1994, 108 Stat. 4021.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–382, § 391(b)(4)(A), substituted ''educational agency'' for ''education agencies''.

Subsec. (e). Pub. L. 103–382, § 394(b)(4)(B)(iii), which directed amendment of subsec. (e) by striking out ''(20 U.S.C. 1058(b)'' could not be executed because ''(20 U.S.C. 1058(b)'' does not appear in subsec. (e).

Pub. L. 103–382, § 391(b)(4)(B)(i), (ii), substituted ''educational agency'' for ''education agency'' and ''section 14101'' for ''section 1471(12)''.

§ 2195. Department of Defense cooperative education programs

(a) The Secretary of Defense shall ensure that the director of each defense laboratory establishes, in association with one or more public or private colleges or universities in the United States or one or more consortia of colleges or universities in the United States, cooperative work-education programs for undergraduate and graduate students.

(b) Under a cooperative work-education program established under subsection (a), a director referred to in that subsection may, without regard to any applicable non-statutory limitation on the number of authorized personnel or on the aggregate amount of any personnel cost—

(1) make an offer for participation in the cooperative work-education program directly to a student and appoint such student to an entry-level position of employment in the laboratory of such director;

(2) pay such person a rate of basic pay, not to exceed the maximum rate of pay provided for grade GS–9 under the General Schedule under section 5332 of title 5, that is competitive with compensation levels provided for entry-level positions in similar industry-sponsored cooperative work-education programs;

(3) pay all travel expenses between the college or university in which the student is enrolled and the laboratory concerned for not more than six round trips per year; and

[1] So in original. Probably should be ''(20 U.S.C. 8801).''

(4) pay all or part of such fees, charges, and costs related to the participation of such student in the cooperative work-education program as tuition, matriculation fees, charges for library and laboratory services, materials, and supplies, and the purchase or rental price of books.

(c) A director of a defense laboratory may—

(1) require a student, as a condition for receiving payments referred to in subsection (b)(4), to enter into a written agreement to continue employment in such defense laboratory for a period of service specified in the agreement; or

(2) make such payments without requiring such an agreement.

(Added Pub. L. 101–510, div. A, title II, §247(a)(1), Nov. 5, 1990, 104 Stat. 1522.)

§2196. Manufacturing engineering education: grant program

(a) ESTABLISHMENT OF GRANT PROGRAM.—(1) The Secretary of Defense shall establish a program under which the Secretary makes grants to support—

(A) the enhancement of existing programs in manufacturing engineering education; or

(B) the establishment of new programs in manufacturing engineering education that meet such requirements.

(2) Grants under this section may be made to institutions of higher education or to consortia of such institutions.

(3) The Secretary shall establish the program in consultation with the Secretary of Education, the Director of the National Science Foundation, and the Director of the Office of Science and Technology Policy.

(b) NEW PROGRAMS IN MANUFACTURING ENGINEERING EDUCATION.—A program in manufacturing engineering education to be established at an institution of higher education may be considered to be a new program for the purpose of subsection (a)(1)(B) regardless of whether the program is to be conducted—

(1) within an existing department in a school of engineering of the institution;

(2) within a manufacturing engineering department to be established separately from the existing departments within such school of engineering; or

(3) within a manufacturing engineering school or center to be established separately from an existing school of engineering of such institution.

(c) MINIMUM NUMBER OF GRANTS FOR NEW PROGRAMS.—Of the total number of grants awarded pursuant to this section, at least one-third shall be awarded for the purpose stated in subsection (a)(1)(B).

(d) GEOGRAPHICAL DISTRIBUTION OF GRANTS.—In awarding grants under this subsection, the Secretary shall, to the maximum extent practicable, avoid geographical concentration of grant awards.

(e) COORDINATION OF GRANT PROGRAM WITH THE NATIONAL SCIENCE FOUNDATION.—The Secretary of Defense and the Director of the National Science Foundation shall enter into an agreement for carrying out the grant program established pursuant to this section. The agreement shall include procedures to ensure that the grant program is fully coordinated with similar existing programs of the National Science Foundation.

(f) COVERED PROGRAMS.—(1) A program of engineering education supported with a grant awarded pursuant to this section shall meet the requirements of this section.

(2) Such a grant may be made for a program of education to be conducted at the undergraduate level, at the graduate level, or at both the undergraduate and graduate levels.

(g) COMPONENTS OF PROGRAM.—The program of education for which such a grant is made shall be a consolidated and integrated multidisciplinary program of education having each of the following components:

(1) Multidisciplinary instruction that encompasses the total manufacturing engineering enterprise and that may include—

(A) manufacturing engineering education and training through classroom activities, laboratory activities, thesis projects, individual or team projects, and visits to industrial facilities, consortia, or centers of excellence in the United States and foreign countries;

(B) faculty development programs;

(C) recruitment of educators highly qualified in manufacturing engineering;

(D) presentation of seminars, workshops, and training for the development of specific research or education skills; and

(E) activities involving interaction between the institution of higher education conducting the program and industry, including programs for visiting scholars or industry executives.

(2) Opportunities for students to obtain work experience in manufacturing through such activities as internships, summer job placements, or cooperative work-study programs.

(3) Faculty and student research that is directly related to, and supportive of, the education of undergraduate or graduate students in advanced manufacturing science and technology because of—

(A) the increased understanding of advanced manufacturing science and technology that is derived from such research; and

(B) the enhanced quality and effectiveness of the instruction that result from that increased understanding.

(h) GRANT PROPOSALS.—The Secretary of Defense, in coordination with the Director of the National Science Foundation, shall solicit from institutions of higher education in the United States (and from consortia of such institutions) proposals for grants to be made pursuant to this section for the support of programs of manufacturing engineering education that are consistent with the purposes of this section.

(i) MERIT COMPETITION.—Applications for grants shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary in consultation with the Director of the National Science Foundation.

(j) SELECTION CRITERIA.—The Secretary may select a proposal for the award of a grant pursuant to this section if the proposal, at a minimum, does each of the following:

(1) Contains innovative approaches for improving engineering education in manufacturing technology.

(2) Demonstrates a strong commitment by the proponents to apply the resources necessary to achieve the objectives for which the grant is to be made.

(3) Provides for the conduct of research that supports the instruction to be provided in the proposed program and is likely to improve manufacturing engineering and technology.

(4) Demonstrates a significant level of involvement of United States industry in the proposed instructional and research activities.

(5) Is likely to attract superior students.

(6) Proposes to involve fully qualified faculty personnel who are experienced in research and education in areas associated with manufacturing engineering and technology.

(7) Proposes a program that, within three years after the grant is made, is likely to attract from sources other than the Federal Government the financial and other support necessary to sustain such program.

(8) Proposes to achieve a significant level of participation by women, members of minority groups, and individuals with disabilities through active recruitment of students from among such persons.

(k) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided.

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1438.)

PRIOR PROVISIONS

A prior section 2196, added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1523; amended Pub. L. 102–25, title VII, § 701(i)(2), Apr. 6, 1991, 105 Stat. 116, defined ''defense laboratory'', prior to repeal by Pub. L. 102–190, § 825(a)(1). See section 2199 of this title.

IMPLEMENTATION OF GRANT PROGRAM; PRIORITY IN FUNDING

Section 825(b) of Pub. L. 102–190 provided that: ''Within one year after the date of the enactment of this Act [Dec. 5, 1991], the Secretary of Defense, in consultation with the Director of the National Science Foundation, shall award grants under section 2196 of title 10, United States Code (as added by subsection (a)), to institutions of higher education throughout the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2197 of this title.

§ 2197. Manufacturing experts in the classroom

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense, in consultation with the Secretary of Education and the Secretary of Commerce, shall conduct a program to support the following activities of one or more manufacturing experts at institutions of higher education:

(1) Identifying the education and training requirements of United States manufacturing firms located in the same geographic region as an institution participating in the program.

(2) Assisting in the development of teaching curricula for classroom and in-factory education and training classes at such an institution.

(3) Teaching such classes and overseeing the teaching of such classes by others.

(4) Improving the knowledge and expertise of permanent faculty and staff of such an institution.

(5) Marketing the programs and facilities of such an institution to firms referred to in paragraph (1).

(6) Coordinating the activities described in the other provisions of this subsection with other programs conducted by the Federal Government, any State, any local government, or any private, nonprofit organization to modernize United States manufacturing firms, especially the regional centers for the transfer of manufacturing technology and programs receiving financial assistance under section 2196 of this title.

(b) MERIT COMPETITION.—Applications for assistance under this section shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary.

(c) SELECTION CRITERIA.—The Secretary shall select institutions for the award of financial assistance under this section from among institutions submitting applications for such assistance that—

(1) demonstrate that the proposed activities are of an appropriate scale and a sufficient quality to ensure long term improvement in the applicant's capability to serve the education and training needs of United States manufacturing firms in the same region as the applicant;

(2) demonstrate a significant level of industry involvement and support;

(3) demonstrate attention to the needs of any United States industries that supply manufactured products to the Department of Defense or to a contractor of the Department of Defense; and

(4) meet such other criteria as the Secretary may prescribe.

(d) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided. In no event may the amount of the financial assistance provided to an institution exceed $250,000 per year. The period for which financial assistance is provided an institution under this section shall be at least two years unless such assistance is earlier terminated for cause determined by the Secretary.

(e) MANUFACTURING EXPERT DEFINED.—In this section, the term ''manufacturing expert'' means manufacturing managers and workers having experience in the organization of production and education and training needs and other experts in manufacturing.

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1440; amended

Pub. L. 102–484, div. D, title XLII, §4238(a), (b)(1), Oct. 23, 1992, 106 Stat. 2694.)

AMENDMENTS

1992—Pub. L. 102–484, §4238(b)(1), substituted ''experts'' for ''managers'' in section catchline.

Subsec. (a). Pub. L. 102–484, §4238(a)(1), struck out ''managers and'' after ''manufacturing'' in introductory provisions.

Subsec. (e). Pub. L. 102–484, §4238(a)(2), added subsec. (e).

§2198. Management training program in Japanese language and culture

(a) The Secretary of Defense, in coordination with the National Science Foundation, shall establish a program for the making of grants on a competitive basis to United States institutions of higher education and other United States not-for-profit organizations for the conduct of programs for scientists, engineers, and managers to learn Japanese language and culture.

(b) The Secretary of Defense shall prescribe in regulations the criteria for awarding a grant under the program for activities of an institution or organization referred to in subsection (a), including the following:

(1) Whether scientists, engineers, and managers of defense laboratories and Department of Energy laboratories are permitted a level of participation in such activities that is beneficial to the development and application of defense critical technologies by such laboratories.

(2) Whether such activities include the placement of United States scientists, engineers, and managers in Japanese government and industry laboratories—

(A) to improve the knowledge of such scientists, engineers, and managers in (i) Japanese language and culture, and (ii) the research and development and management practices of such laboratories; and

(B) to provide opportunities for the encouragement of technology transfer from Japan to the United States.

(3) Whether an appropriate share of the costs of such activities will be paid out of funds derived from non-Federal Government sources.

(c) In this section, the term ''defense critical technology'' means a technology identified in a defense critical technologies plan submitted to the Congress under section 2506 of this title.

(Added Pub. L. 102–190, div. A, title VIII, §828(a), Dec. 5, 1991, 105 Stat. 1444; amended Pub. L. 103–35, title II, §201(c)(3), May 31, 1993, 107 Stat. 98.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–35 substituted ''a defense'' for ''an annual defense'' and ''section 2506'' for ''section 2522''.

§2199. Definitions

In this chapter:

(1) The term ''defense laboratory'' means a laboratory operated by the Department of Defense or owned by the Department of Defense and operated by a contractor or a facility of a Defense Agency at which research and development activities are conducted.

(2) The term ''institution of higher education'' has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(3) The term ''regional center for the transfer of manufacturing technology'' means a regional center for the transfer of manufacturing technology referred to in section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k).

(Added Pub. L. 102–190, div. A, title VIII, §825(a)(1), Dec. 5, 1991, 105 Stat. 1441.)

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AMENDMENTS

1994—Pub. L. 103–355, title VIII, §8101(b), Oct. 13, 1994, 108 Stat. 3389, added item for chapter 140.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(1), Nov. 30, 1993, 107 Stat. 1713, struck out item for chapter 135 ''Encouragement of Aviation''.

1992—Pub. L. 102–484, div. D, title XLII, §4271(b)(1), Oct. 23, 1992, 106 Stat. 2695, added item for chapter 148 and struck out former items for chapters 148 ''Defense Industrial Base'', 149 ''Manufacturing Technology'', and 150 ''Development of Dual-Use Critical Technologies''.

1991—Pub. L. 102–190, div. A, title VIII, §821(f), title X, §1061(a)(27)(A), Dec. 5, 1991, 105 Stat. 1432, 1474, sub-

stituted ''Manufacturing'' for ''Maufacturing'' in item for chapter 149, substituted ''Development of Dual-Use Critical Technologies'' for ''Issue to Armed Forces'' in item for chapter 150, struck out item for chapter 151 ''Issue of Serviceable Material Other Than to Armed Forces'', and added item for chapter 152.

1990—Pub. L. 101–510, div. A, title VIII, § 823(b)(1), title XVIII, § 1801(a)(2), Nov. 5, 1990, 104 Stat. 1602, 1757, added item for chapter 149, redesignated former item for chapter 149 as item for chapter 150, and added item for chapter 172.

1989—Pub. L. 101–189, div. A, title IX, § 931(e)(2), Nov. 29, 1989, 103 Stat. 1535, substituted ''Cooperative Agreements'' for ''Acquisition and Cross-Servicing Agreements'' in item for chapter 138.

1988—Pub. L. 100–456, div. A, title III, §§ 342(a)(2), 344(b)(2), title VIII, § 821(b)(2), Sept. 29, 1988, 102 Stat. 1961, 1962, 2016, substituted ''Defense Industrial Base'' for ''Buy American Requirements'' in item for chapter 148, substituted ''Property Records and Report of Theft or Loss of Certain Property'' for ''Property Records'' in item for chapter 161, and added item for chapter 171.

Pub. L. 100–370, §§ 1(e)(2), 2(a)(2), 3(a)(2), July 19, 1988, 102 Stat. 845, 854, 855, added items for chapters 134, 146, and 148.

1987—Pub. L. 100–26, § 7(c)(1), Apr. 21, 1987, 101 Stat. 280, substituted ''Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries'' for ''North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements'' in item for chapter 138, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' and ''2430'' for ''2431'' in item for chapter 144, and substituted ''2721'' for ''2701'' in item for chapter 161.

1986—Pub. L. 99–661, div. A, title XIII, § 1343(a)(22), Nov. 14, 1986, 100 Stat. 3994, substituted ''2341'' for ''2321'' in item for chapter 138.

Pub. L. 99–499, title II, § 211(a)(2), Oct. 17, 1986, 100 Stat. 1725, added item for chapter 160.

Pub. L. 99–433, title VI, § 605(b), Oct. 1, 1986, 100 Stat. 1075a, added item for chapter 144.

1984—Pub. L. 98–525, title XII, § 1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

1982—Pub. L. 97–295, § 1(50)(E), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 167.

Pub. L. 97–214, § 2(b), July 12, 1982, 96 Stat. 169, added item for chapter 169.

1980—Pub. L. 96–323, § 2(b), Aug. 4, 1980, 94 Stat. 1019, added item for chapter 138.

CROSS REFERENCES

Particular provisions relating to—
Air Force, see section 9501 et seq. of this title.
Army, see section 4501 et seq. of this title.
National Guard, see section 701 et seq. of Title 32, National Guard.
Navy, see section 7521 et seq. of this title.

CHAPTER 131—PLANNING AND COORDINATION

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AMENDMENTS

1994—Pub. L. 103–355, title II, § 2454(c)(3)(A), title III, § 3061(b), title V, § 5001(a)(2), Oct. 13, 1994, 108 Stat. 3326, 3336, 3350, substituted ''Regulations on procurement, production, warehousing, and supply distribution functions'' for ''Obligation of funds: limitation'' in item 2202, struck out item 2212 ''Contracted advisory and assistance services: accounting procedures'', and added item 2220.

Pub. L. 103–337, div. A, title III, § 373(b), div. B, title XXVIII, § 2804(b)(2), Oct. 5, 1994, 108 Stat. 2736, 3053, substituted ''Reimbursements'' for ''Availability of reimbursements'' in item 2205 and added item 2219.

1993—Pub. L. 103–160, div. A, title XI, § 1106(a)(2), Nov. 30, 1993, 107 Stat. 1750, added item 2215.

1992—Pub. L. 102–484, div. A, title X, § 1024(a)(2), Oct. 23, 1992, 106 Stat. 2488, added item 2218.

1991—Pub. L. 102–190, div. A, title III, § 317(b), Dec. 5, 1991, 105 Stat. 1338, added item 2213.

1990—Pub. L. 101–510, div. A, title XIII, § 1331(2), title XIV, §§ 1482(c)(2), 1484(i)(6), Nov. 5, 1990, 104 Stat. 1673, 1710, 1718, struck out item 2213 ''Cooperative military airlift agreements'', added item 2214, and struck out items 2215 ''Reports on unobligated balances'' and 2216 ''Annual report on budgeting for inflation''.

1988—Pub. L. 100–370, § 1(d)(4), July 19, 1988, 102 Stat. 843, added items 2201, 2212, and 2217.

1986—Pub. L. 99–661, div. A, title XIII, § 1307(a)(2), Nov. 14, 1986, 100 Stat. 3981, added items 2215 and 2216.

1982—Pub. L. 97–252, title XI, § 1125(b), Sept. 8, 1982, 96 Stat. 758, added item 2213.

Pub. L. 97–214, § 10(a)(1), July 12, 1982, 96 Stat. 174, struck out item 2212 ''Transmission of annual military construction authorization request''.

1978—Pub. L. 95–356, title VIII, § 802(a)(2), Sept. 8, 1978, 92 Stat. 585, added item 2212.

1962—Pub. L. 87–651, title II, § 207(b), Sept. 7, 1962, 76 Stat. 523, added items 2203 to 2211.

1958—Pub. L. 85–599, § 3(c), Aug. 6, 1958, 72 Stat. 516, struck out item 2201 ''General functions of Secretary of Defense''.

§ 2201. Apportionment of funds: authority for exemption; excepted expenses

(a) EXEMPTION FROM APPORTIONMENT REQUIREMENT.—If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) AIRBORNE ALERTS.—Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(c) MEMBERS ON ACTIVE DUTY.—Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on

active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(d) NOTIFICATION TO CONGRESS.—The Secretary of Defense—

(1) shall immediately notify Congress of the use of any authority under this section; and

(2) shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsections (b) and (c).

(Added Pub. L. 100–370, § 1(d)(1)(A), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8009], Dec. 19, 1985, 99 Stat. 1185, 1204.

In two instances, the source law to be codified by the bill includes provisions that on their face require that the Department of Defense notify Congress of certain actions. These notification requirements were terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433), which terminated all recurring reporting requirements applicable to the Department of Defense except for those requirements that were specifically exempted in that section. The source law sections are sections 8009(c) and 8005(j) (proviso) of the FY86 defense appropriations Act (Public Law 99–190), enacted December 19, 1985, which would be codified as section 2201 of title 10 (by section 1(d) of the bill) and section 7313(a) of title 10 (by section 1(n) of the bill). In codifying the authorities provided the Department of Defense by these two provisions of law, the committee believes that it is appropriate to reinstate the congressional notification requirements that go with those authorities. These sections were recurring annual appropriation provisions for many years and were made permanent only months before the enactment of the 1986 Reorganization Act. It is the committee's belief that the failure to exempt these provisions from the general reports termination provision was inadvertent and notes that the notification provisions had in fact previously applied to the Department of Defense for many years. The action of the committee restores the status quo as it existed before the Reorganization Act.

PRIOR PROVISIONS

A prior section 2201, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, prescribed the general functions of the Secretary of Defense, prior to repeal by Pub. L. 85–599, § 3(c), Aug. 6, 1958, 72 Stat. 516. See section 113 of this title.

§ 2202. Regulations on procurement, production, warehousing, and supply distribution functions

The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120; Dec. 4, 1987, Pub. L. 100–180, div. A, title XII, § 1202, 101 Stat. 1153; Oct. 13, 1994, Pub. L. 103–355, title III, § 3061(a), 108 Stat. 3336.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2202	41:162.	July 10, 1952, ch. 630, § 638, 66 Stat. 537.

The words "an officer or agency * * * may * * * only" are substituted for the words "no officer or agency * * * shall * * * except". The word "of", before the words "the Department", is substituted for the words "in or under". The words "under regulations prescribed" are substituted for the words "in accordance with regulations issued". The words "after the effective date of this section" and 41:162(b) are omitted as executed. The words "or equipment" are omitted as covered by the definition of "supplies" in section 101(26) of this title.

AMENDMENTS

1994—Pub. L. 103–355 amended heading and text generally. Prior to amendment, text read as follows:

"(a) Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions.

"(b) Except as otherwise provided by law, the availability for obligation of funds appropriated for any program, project, or activity of the Department of Defense expires at the end of the three-year period beginning on the date that such funds initially become available for obligation unless before the end of such period the Secretary of Defense enters into a contract for such program, project, or activity."

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

§ 2203. Budget estimates

To account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs, budget estimates of the Department of Defense shall be prepared, presented, and justified, where practicable, and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may prescribe. As far as practicable, budget estimates and authorized programs of the military departments shall be uniform and in readily comparable form. The budget for the Department of Defense submitted to Congress for each fiscal year shall include data projecting the effect of the appropriations requested for materiel readiness requirements. The Secretary of Defense shall provide that the budget justification documents for such budget include information on the number of employees of contractors estimated to be working on contracts of the Department of Defense during the fiscal year for which the budget is submitted. Such information shall be set forth in terms of employee-years or such other measure as will be uniform and readily comparable with civilian personnel of the Department of Defense.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–295, § 1(21), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–661, div. A, title III, § 311, Nov. 14, 1986, 100 Stat. 3851.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2203	5:172b.	July 26, 1947, ch. 343, § 403; added Aug. 10, 1949, ch. 412, § 11 (5th and 6th pars.), 63 Stat. 586.

The word ''prescribe'' is substituted for the word ''determine''. 5 U.S.C. 172b(b) is omitted as executed.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2203 (last sentence).	10:2203 (note).	July 30, 1977, Pub. L. 95–79, § 812 (last sentence), 91 Stat. 336.

The words ''for fiscal year 1979'' are omitted as executed. The words ''for each fiscal year'' are substituted for ''subsequent fiscal years'' for consistency.

AMENDMENTS

1986—Pub. L. 99–661 inserted provisions that budget justification documents include information on number of employees estimated to be working during the fiscal year, such information to be set forth in terms of employee-years or other measure as is uniform and comparable with civilian personnel of the Department of Defense.

1982—Pub. L. 97–295 inserted provision requiring that the budget for the Department of Defense submitted annually to Congress include data projecting the effect of the appropriations requested for materiel readiness requirements.

PRESIDENTIAL RECOMMENDATIONS RESPECTING MODIFICATIONS IN CRUISE MISSILE PROGRAM

Pub. L. 95–184, title II, § 203, Nov. 15, 1977, 91 Stat. 1382, provided that in authorizing funds under that Act [Pub. L. 95–184], Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in the United States cruise missile programs as the President might recommend to facilitate either negotiation or agreement in arms limitation or reduction talks.

REPORT TO CONGRESSIONAL COMMITTEES ON MATERIAL READINESS REQUIREMENTS FOR ARMED FORCES

Pub. L. 95–79, title VIII, § 812, July 30, 1977, 91 Stat. 336, as amended by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314, directed Secretary of Defense to submit to Congress, not later than February 15, 1978, a report setting forth quantifiable and measurable material readiness requirements for the Armed Forces, including the Reserve components thereof, monthly readiness status of the Armed Forces, including the reserve components thereof, during fiscal year 1977, and any changes in such requirements and status projected for fiscal years 1978 and 1979 and in the five-year defense program, and to inform Congress of any subsequent changes in the aforementioned materiel readiness requirements and the reasons for such changes.

MODIFICATIONS IN UNITED STATES STRATEGIC ARMS PROGRAMS ON RECOMMENDATION OF PRESIDENT

Pub. L. 95–79, title VIII, § 813, July 30, 1977, 91 Stat. 337, provided that in authorizing procurement under section 101 of that Act and research and development under section 201 of that Act, Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in United States strategic arms programs as the President might recommend to facilitate either negotiation or agreement in the Strategic Arms Limitation Talks.

§ 2204. Obligation of appropriations

To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2204	5:172c.	July 26, 1947, ch. 343, § 404; added Aug. 10, 1949, ch. 412, § 11 (7th par.), 63 Stat. 587.

The words ''on and after the beginning of the next fiscal year following August 10, 1949,'' are omitted as executed. The last sentence is substituted for the proviso in 5 U.S.C. 172c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2384a of this title.

§ 2205. Reimbursements

(a) AVAILABILITY OF REIMBURSEMENTS.—Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under sections 1535 and 1536 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.

(b) FIXED RATE FOR REIMBURSEMENT FOR CERTAIN SERVICES.—The Secretary of Defense and the Secretaries of the military departments may charge a fixed rate for reimbursement of the costs of providing planning, supervision, administrative, or overhead services incident to any construction, maintenance, or repair project to real property or for providing facility services, irrespective of the appropriation financing the project or facility services.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 96–513, title V, § 511(71), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103–337, div. B, title XXVIII, § 2804(a), (b)(1), Oct. 5, 1994, 108 Stat. 3053.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2205	5:172g.	July 26, 1947, ch. 343, § 408; added Aug. 10, 1949, ch. 412, § 11 (23d par.), 63 Stat. 590.

5 U.S.C. 172g is restated to reflect more clearly its purpose to authorize the Department of Defense to operate as an integrated department by permitting supplies to be furnished and services to be rendered within and among agencies of the Department of Defense and provide that reimbursements therefor be credited to authorized accounts and be available for the same purpose and period as the accounts so credited. (See Senate Report No. 366, 81st Congress, pp. 23, 24.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Reimbursements'' for ''Availability of reimbursements'' as section catchline, designated existing provisions as subsec. (a) and inserted subsec. heading, and added subsec. (b).

1982—Pub. L. 97–258 substituted ''sections 1535 and 1536 of title 31'' for ''the Act of March 4, 1915 (31 U.S.C. 686)''.

1980—Pub. L. 96–513 substituted ''the Act of March 4, 1915 (31 U.S.C. 686)'' for ''section 686 of title 31''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense

As far as authorized by the Secretary of Defense, a disbursing official of a military department may, out of available advances, make disbursements to cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing official.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2206	5:172h. 5:171n(a) (as applicable to 5:172h).	July 26, 1947, ch. 343, § 409; added Aug. 10, 1949, ch. 412, § 11 (24th par.), 63 Stat. 590. July 26, 1947, ch. 343, § 308(a) (as applicable to § 409), 61 Stat. 509.

The word ''agency'' is substituted for the word ''organization''. The last sentence is substituted for the proviso in 5 U.S.C. 172h.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''official'' for ''officer'' wherever appearing.

§ 2207. Expenditure of appropriations: limitation

Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2207	5:174d.	June 30, 1954, ch. 432, § 719, 68 Stat. 353.

The following substitutions are made: ''spent'' for ''expended''; ''United States'' for ''Government''; ''if a contract is terminated under clause (1)'' for ''that in the event any such contract is so terminated''; and ''has . . . that it would have had if'' for ''shall be entitled . . . to pursue . . . as it could pursue in the event of''. The word ''official'' is inserted for clarity. The words ''entered into after June 30, 1954'' are omitted as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2208. Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used; and

(2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing or remanufacturing services provided by such facilities, to persons outside the Department of Defense if—

(1) the person purchasing the article or service is fulfilling a Department of Defense contract; and

(2) the Department of Defense solicitation for such contract is open to competition between Department of Defense activities and private firms.

(k) The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97–295, § 1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title XII, § 1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title III, § 305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100–26, § 7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101–510, div. A, title VIII, § 801, title XIII, § 1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102–172, title VIII, § 8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102–484, div. A, title III, § 374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–160, div. A, title I, § 158(b), Nov. 30, 1993, 107 Stat. 1582.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(a)	5:172d(a).	July 26, 1947, ch. 343, § 405; added Aug. 10, 1949, ch. 412, § 11 (8th through 15th pars.), 63 Stat. 587.
2208(b)	5:172d(b).	
2208(c)	5:172d(c) (less 2d sentence).	
2208(d).	5:172d(d).	
2208(e)	5:172d(e)	
2208(f)	5:172d(f).	
2208(g)	5:172d(h).	
2208(h)	5:172d(g).	
2208(i)	5:172d(c) (2d sentence).	

In subsection (a)(1), (c)(1), (f), (g), and (h), the words ''stores, . . . materials, and equipment'' are omitted as covered by the word ''supplies'', as defined in section 101(26) of title 10.

In subsection (c), the word ''used'' is substituted for the word ''consumed''. The words ''and costs of using equipment'' are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: ''prescribe'' for ''issue''; and ''persons'' for ''purchasers or users''. The word ''shall'' is substituted for the words ''is authorized to'' in the first sentence and for the word ''may'' in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(h) (3d sentence).	10:2208 (note).	Dec. 21, 1979, Pub. L. 96–154, § 767, 93 Stat. 1163.

The word ''hereafter'' is omitted as executed.

AMENDMENTS

1993—Subsec. (i). Pub. L. 103–160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required

that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases.

1992—Subsec. (j). Pub. L. 102–484 substituted ''The Secretary of a military department may authorize a working capital funded industrial facility of that department'' for ''The Secretary of the Army may authorize a working capital funded Army industrial facility''.

1991—Subsecs. (j), (k). Pub. L. 102–172 added subsec. (j) and redesignated former subsec. (j) as (k).

1990—Subsec. (i)(1). Pub. L. 101–510, §801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows:

''(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

''(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

''(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

''(C) the article is not readily available from a commercial source in the United States; and

''(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

''(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.''

Subsec. (k). Pub. L. 101–510, §1301(6), struck out subsec. (k) which read as follows: ''Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.''

1987—Subsec. (i)(3). Pub. L. 100–26 inserted ''(22 U.S.C. 2778)'' after ''Arms Export Control Act''.

1984—Subsecs. (i) to (k). Pub. L. 98–525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98–94 substituted ''In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law'' for ''If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose''.

1982—Subsec. (h). Pub. L. 97–295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1204(b) of Pub. L. 98–94 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984.''

OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–337, div. A, title III, §311(b)–(g), Oct. 5, 1994, 108 Stat. 2708, 2709, provided that:

''(b) PURCHASE FROM OTHER SOURCES.—The Secretary of Defense or the Secretary of a military department may purchase goods and services that are available for purchase from the Defense Business Operations Fund from a source other than the Fund if the Secretary determines that such source offers a more competitive rate for the goods and services than the Fund offers.

''(c) LIMITATION ON INCLUSION OF CERTAIN COSTS IN DBOF CHARGES.—A charge imposed for a good or service provided through the Fund may not include amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

''(d) PROCEDURES FOR ACCUMULATION OF FUNDS.—The Secretary of Defense shall establish billing procedures to ensure that the balance in the Fund does not exceed the amount necessary to provide for the working capital requirements of the Fund, as determined by the Secretary.

''(e) ANNUAL REPORTS AND BUDGET.—The Secretary of Defense shall annually submit to the congressional defense committees, at the same time that the President submits the budget under section 1105 of title 31, United States Code, the following:

''(1) A detailed report that contains a statement of all receipts and disbursements of the Fund (including such a statement for each subaccount of the Fund) for the year for which the report is submitted.

''(2) A detailed proposed budget for the operation of the Fund for the fiscal year for which the budget is submitted.

''(3) A comparison of the amounts actually expended for the operation of the Fund for the previous fiscal year with the amount proposed for the operation of the Fund for that fiscal year in the budget.

''(f) IMPLEMENTATION OF IMPROVEMENT PLAN.—(1) Not later than February 1, 1995, the Secretary of Defense shall submit to the congressional defense committees a report on the progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993. The report shall describe the progress made in reaching the milestones established in the plan and provide an explanation for any failure to meet any such milestone. The Secretary shall submit a copy of the report to the Comptroller General of the United States at the same time that the Secretary submits the report to the congressional defense committees.

''(2) The Comptroller General shall monitor and evaluate the progress of the Department of Defense in developing and implementing the improvement plan referred to in paragraph (1).

''(3) Not later than March 1, 1995, the Comptroller General shall submit to the congressional defense committees a report containing the following:

''(A) An evaluation of the progress report submitted to the congressional defense committees by the Secretary of Defense pursuant to paragraph (1).

''(B) The findings and conclusions of the Comptroller General resulting from the monitoring and evaluation conducted under paragraph (2).

''(C) Any recommendations for legislation or administrative action concerning the Fund that the Comptroller General considers appropriate.

''(g) DEFINITION.—In this section, the term 'Fund' means the Defense Business Operations Fund.''

CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Section 333(a), (b) of Pub. L. 103–160 provided that:

''(a) IN GENERAL.—Charges for goods and services provided through the Defense Business Operations Fund—

''(1) shall include amounts necessary to recover the full costs of—

''(A) the development, implementation, operation, and maintenance of systems supporting the wholesale supply and maintenance activities of the Department of Defense; and

''(B) the use of military personnel in the provision of the goods and services, as computed by calculating, to the maximum extent practicable, such costs if employees of the Department of Defense were used in the provision of the goods and services; and

''(2) shall not include amounts necessary to recover the costs of a military construction project (as such term is defined in section 2801(b) of title 10, United

States Code), other than a minor construction project financed by the Defense Business Operations Fund pursuant to section 2805(c)(1) of such title.

''(b) DEFENSE FINANCE ACCOUNTING SERVICES.—The full cost of the operation of the Defense Finance Accounting Service shall be financed within the Defense Business Operations Fund through charges for goods and services provided through the Fund.''

CAPITAL ASSET SUBACCOUNT

Section 342 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title III, § 333(c), Nov. 30, 1993, 107 Stat. 1622, provided that:

''(a) USE OF SUBACCOUNT FOR CAPITAL ASSETS DEPRECIATION CHARGES.—Charges for goods and services provided through the Defense Business Operations Fund shall include amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles. Amounts charged for depreciation shall be credited to a separate capital asset subaccount established within the Fund.

''(b) AWARD OF CONTRACTS.—The Secretary of Defense may award contracts for capital assets of the Fund in advance of the availability of funds in the subaccount.

''(c) ANNUAL REPORT.—The Secretary of Defense shall submit to the congressional defense committees each year, at the same time that the President submits the budget to the Congress under section 1105 of title 31, United States Code, a report that specifies—

''(1) the opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted;

''(2) the estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted;

''(3) the estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted;

''(4) the estimated balance of the subaccount at the end of the fiscal year in which the report is submitted; and

''(5) a statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

''(d) AUTHORIZATION.—There is hereby authorized to be appropriated to the Fund subaccount for fiscal years 1993 and 1994 such sums as may be necessary to pay outlays for capital assets in excess of the amount otherwise available in the subaccount.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'capital assets' means the following capital assets that have a development or acquisition cost of not less than $15,000:

''(A) Minor construction projects financed by the Fund pursuant to section 2805(c)(1) of title 10, United States Code.

''(B) Automatic data processing equipment, software, other equipment, and other capital improvements.

''(2) The term 'Fund' means the Defense Business Operations Fund.''

LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102–190, div. A, title III, § 316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102–484, div. A, title III, § 341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103–160, div. A, title III, §§ 331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103–337, div. A, title III, § 311(a), Oct. 5, 1994, 108 Stat. 2708, provided that:

''(a) MANAGEMENT METHOD.—The Secretary of Defense may manage the performance of the working-capital funds and industrial, commercial, and support type activities described in subsection (b) through the use of a single Defense Business Operations Fund (in this section referred to as the 'Fund'). Except for the funds and activities specified in subsection (b), no other functions, activities, funds, or accounts of the Department of Defense may be managed through the Defense Business Operations Fund.

''(b) FUNDS AND ACTIVITIES INCLUDED.—The funds and activities referred to in subsection (a) are—

''(1) working-capital funds established under section 2208 of title 10, United States Code, and in existence on the date of the enactment of this Act [Dec. 5, 1991];

''(2) those activities that, on the date of the enactment of this Act, are funded through the use of a working-capital fund established under that section; and

''(3) the Defense Finance and Accounting Service, the Defense Industrial Plant Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, and the Defense Reutilization and Marketing Service.

''(c) SEPARATE ACCOUNTING, REPORTING, AND AUDITING OF FUNDS AND ACTIVITIES.—For purposes of accounting, financial reporting, and auditing, the Secretary of Defense shall maintain—

''(1) the separate identity of each fund and activity managed through the Fund that (before the establishment of the Fund) was managed as a separate fund or activity; and

''(2) separate records for each function for which payment is made through the Fund and which (before the establishment of the Fund) was paid directly through appropriations, including the separate identity of the appropriation account used to pay for the performance of the function.

''(d) COMPREHENSIVE MANAGEMENT PLAN.—(1) Not later than 30 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], the Secretary of Defense shall submit to the congressional defense committees a comprehensive management plan for the Defense Business Operations Fund. The Secretary shall identify in the plan the actions the Secretary will take to improve the implementation and operation of the Defense Business Operations Fund.

''(2)(A) The plan shall also include the following matters:

''(i) The specific tasks to be performed to address the serious shortcomings that exist in the Fund's implementation and operation.

''(ii) Milestones for starting and completing each task.

''(iii) A statement of the resources needed to complete each task.

''(iv) The specific organizations within the Department of Defense that are responsible for accomplishing each task.

''(v) Department of Defense plans to monitor the implementation of all corrective actions.

''(B) The plan shall also address the following specific areas:

''(i) The management and organizational structure of the Fund.

''(ii) The development and implementation of the policies and procedures, including cash management and internal controls, applicable to the Fund.

''(iii) Management reporting, including financial and operational reporting.

''(iv) Accuracy and reliability of cost accounting data.

''(v) Development and use of performance indicators to measure the efficiency and effectiveness of Fund operations.

''(vi) The status of efforts to develop and implement new financial systems for the Fund.

''(e) PROGRESS REPORT ON IMPLEMENTATION.—Not later than February 1, 1994, the Secretary of Defense shall submit to the congressional defense committees a report on the progress made in implementing the comprehensive management plan required by subsection (d). The report shall describe the progress made in reaching the milestones established in the plan and

provide an explanation for the failure to meet any of the milestones. The Secretary shall submit a copy of the report to the Comptroller General of the United States at the same time the Secretary submits the report to the congressional defense committees.

''(f) RESPONSIBILITIES OF THE COMPTROLLER GENERAL.—(1) The Comptroller General shall monitor and evaluate the progress of the Department of Defense in developing and implementing the comprehensive management plan required by subsection (d).

''(2) Not later than March 1, 1994, the Comptroller General shall submit to the congressional defense committees a report containing the following:

''(A) The findings and conclusions of the Comptroller General resulting from the monitoring and evaluation conducted under paragraph (1).

''(B) An evaluation of the progress report submitted to the congressional defense committees by the Secretary of Defense pursuant to subsection (e).

''(C) Any recommendations for legislation or administrative action concerning the Fund that the Comptroller General considers appropriate.''

DEFENSE BUSINESS OPERATIONS FUND

Section 8121 of Pub. L. 102–172 provided that:

''(a) There is established on the books of the Treasury a fund entitled the 'Defense Business Operations Fund' (hereinafter referred to as the 'Fund') to be operated as a working capital fund under the provisions of section 2208 of title 10, United States Code. Existing organizations which shall operate as part of the Fund shall include, but not be limited to, (1) The Defense Finance and Accounting Service; (2) The Defense Commissary Agency; (3) The Defense Technical Information Center; (4) The Defense Reutilization and Marketing Service; and (5) The Defense Industrial Plant Equipment Service.

''(b) Upon the enactment of this Act [Nov. 26, 1991], there shall be transferred to the Fund all assets and balances of working capital funds heretofore established under the provisions of section 2208 of title 10, United States Code.

''(c) Amounts charged for supplies and services provided by the Fund shall include capital asset charges which shall be calculated so that the total amount of the charges assessed during any fiscal year shall equal the total amount of (1) the costs of equipment purchased during that fiscal year by the Fund for the purpose of providing supplies and services by the Fund and (2) the costs, other than costs of military construction, of capital improvements made for the purpose of providing services by the Fund.

''(d) Capital asset charges collected pursuant to the provisions of subsection (c) shall be credited to a subaccount of the Fund which shall be available only for the payment of: (1) the costs of equipment purchased by the Fund for the purpose of providing supplies and services by the Fund and (2) the costs other than costs of military construction, of capital improvements made for the purposes of providing services by the Fund.''

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96–154, title VII, §767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and reenacted in subsec. (h) of this section by Pub. L. 97–295, §§1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

CROSS REFERENCES

Sale of articles acquired with working capital funds, see sections 4621 and 9621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 129, 2210, 2350c, 4543, 4621, 7227, 9621 of this title; title 40 section 484.

§2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of $1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced.

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2209(a)	5:172e(a), (b).	July 3, 1942, ch. 484; restated Aug. 10, 1949, ch. 412, §11 (16th through 19th pars.), 63 Stat. 588.
2209(b)	5:172e(c) (last sentence).	
2209(c)	5:172e(c) (less last sentence).	
	5:172e(d).	

In subsection (a), the second sentence is substituted for the second sentence of 5 U.S.C. 172e(a) and the first sentence (less last 21 words) of 5 U.S.C. 172e(b) which are omitted as unnecessary.

In subsection (c), the 13th through 33d words of 5 U.S.C. 172e(d) are omitted as surplusage.

§2210. Proceeds of sales of supplies: credit to appropriations

(a) Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of

Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(72), Dec. 12, 1980, 94 Stat. 2926.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2210(a)	5:172d–1 (less proviso).	Aug. 1, 1953, ch. 305, § 645, 67 Stat. 357.
2210(b)	5:172d–1 (proviso).	

In section (a), the words ''proceeds of the disposal'' are substituted for the words ''moneys arising from the disposition''.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d)).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(73), Dec. 12, 1980, 94 Stat. 2926.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2211	5:171m–1.	Jan. 6, 1951, ch. 1213, § 703, 64 Stat. 1235.

The reference to section 2392(d) of title 22 is substituted for the reference to section 1574(b) of that title to reflect section 542(b) of the Act of August 26, 1954, ch. 937 (68 Stat. 861) and section 642(a)(2) and (b) of the Act of September 4, 1961, Pub. L. 87–195 (75 Stat. 460).

AMENDMENTS

1980—Pub. L. 96–513 substituted ''section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d))'' for ''section 2392(d) of title 22''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 2212. Repealed. Pub. L. 103–355, title II, § 2454(c)(1), Oct. 13, 1994, 108 Stat. 3326]

Section, added Pub. L. 100–370, § 1(d)(2)(A), July 19, 1988, 102 Stat. 842, directed Secretary of Defense to maintain within each military department an accounting procedure to aid in identification and control of expenditures for contracted advisory and assistance services.

A prior section 2212, added Pub. L. 95–356, title VIII, § 802(a)(1), Sept. 8, 1978, 92 Stat. 585; amended Pub. L. 97–258, § 3(b)(5), Sept. 18, 1982, 96 Stat. 1063, related to transmission of annual military construction authorization request, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2859 of this title.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2213. Limitation on acquisition of excess supplies

(a) TWO-YEAR SUPPLY.—The Secretary of Defense may not incur any obligation against a stock fund of the Department of Defense for the acquisition of any item of supply if that acquisition is likely to result in an on-hand inventory (excluding war reserves) of that item of supply in excess of two years of operating stocks.

(b) EXCEPTIONS.—The head of a procuring activity may authorize the acquisition of an item of supply in excess of the limitation contained in subsection (a) if that activity head determines in writing—

(1) that the acquisition is necessary to achieve an economical order quantity and will not result in an on-hand inventory (excluding war reserves) in excess of three years of operating stocks and that the need for the item is unlikely to decline during the period for which the acquisition is made; or

(2) that the acquisition is necessary for purposes of maintaining the industrial base or for other reasons of national security.

(Added Pub. L. 102–190, div. A, title III, § 317(a), Dec. 5, 1991, 105 Stat. 1338.)

PRIOR PROVISIONS

A prior section 2213 was renumbered section 2350c of this title.

§ 2214. Transfer of funds: procedure and limitations

(a) PROCEDURE FOR TRANSFER OF FUNDS.—Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.—Such authority to transfer amounts—

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and

(2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) NOTICE TO CONGRESS.—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

(Added Pub. L. 101–510, div. A, title XIV, §1482(c)(1), Nov. 5, 1990, 104 Stat. 1709.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as an Effective Date of 1990 Amendment note under section 119 of this title.

§2215. Transfer of funds to other departments and agencies: limitation

Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives a certification that making those funds available to such other department or agency is in the national security interest of the United States.

(Added Pub. L. 103–160, div. A, title XI, §1106(a)(1), Nov. 30, 1993, 107 Stat. 1750.)

PRIOR PROVISIONS

A prior section 2215, added Pub. L. 99–661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to reports on unobligated balances, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1301(7), Nov. 5, 1990, 104 Stat. 1668.

Similar provisions were contained in Pub. L. 101–189, div. A, title XVI, §1604, Nov. 29, 1989, 103 Stat. 1598, which was set out as a note under section 1531 of Title 31, Money and Finance, prior to repeal by Pub. L. 103–160, §1106(b).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

[§2216. Repealed. Pub. L. 101–510, div. A, title XIII, §1301(8), Nov. 5, 1990, 104 Stat. 1668]

Section, added Pub. L. 99–661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to annual reports on budgeting for inflation.

§2217. Comparable budgeting for common procurement weapon systems

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

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

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

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

(b) COMPTROLLER.—The Secretary shall carry out this section through the Comptroller of the Department of Defense.[1]

(c) DEFINITIONS.—In this section:

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

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

(Added Pub. L. 100–370, §1(d)(3)(A), July 19, 1988, 102 Stat. 843.)

HISTORICAL AND REVISION NOTES

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

§2218. National Defense Sealift Fund

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

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

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

(A) construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels;

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

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

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

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

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph

[1] So in original. Probably should be ''Under Secretary of Defense (Comptroller)''.

(1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

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

(1) All funds appropriated to the Department of Defense for fiscal years after fiscal year 1993 for—

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

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

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

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

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

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

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

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

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

(f) LIMITATIONS.—(1) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

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

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

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

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

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

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

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

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

(j) AUTHORITY FOR CERTAIN USE OF FUNDS.—Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1)(A), (B), (C), and (D) for any purpose under subsection (c)(1).

(k) DEFINITIONS.—In this section:

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

(2) The term ''Department of Defense sealift vessel'' means any ship owned, operated, controlled, or chartered by the Department of Defense that is—

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

(B) a maritime prepositioning ship;

(C) an afloat prepositioning ship;

(D) an aviation maintenance support ship; or

(E) a hospital ship.

(3) The term ''national defense sealift vessel'' means—

(A) a Department of Defense sealift vessel; and

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

(Added Pub. L. 102–484, div. A, title X, § 1024(a)(1), Oct. 23, 1992, 106 Stat. 2486; amended Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896.)

REFERENCES IN TEXT

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

CODIFICATION

Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896, provided that section 1024 of the National Defense Authorization Act for Fiscal Year 1993 [H.R. 5006, Pub. L. 102–484], as it passed the Senate on Oct. 3, 1992, shall be amended in subsection 2218(c)(2) proposed for inclusion in this chapter by deleting all after ''expended only'' down to and including ''appropriations Act'' and inserting in lieu thereof ''in amounts authorized by law''. It further provided that for purposes of that amendment, Pub. L. 102–396 shall be treated as having been enacted after Pub. L. 102–484, regardless of the actual dates of enactment. The date of Oct. 3, 1992, referred to as the date the Senate passed the National Defense Authorization Act for Fiscal Year 1993, apparently is based on an order adopted by the Senate on Oct. 3, 1992 [Cong. Rec., vol. 138, p. S16485, Daily Issue] providing that when the conference report on the National Defense Authorization Act for Fiscal Year 1993 was received by the Senate from the House of Representatives it would be deemed to have been agreed to. On Oct. 5, 1992, the Senate received the conference report from the House, and it was considered adopted pursuant to that order [Cong. Rec., vol. 138, p. S16652, Daily Issue].

AMENDMENTS

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

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§2219. Retention of morale, welfare, and recreation funds by military installations: limitation

Amounts may not be retained in a nonappropriated morale, welfare, and recreation account of a military installation of a military department in excess of the amount necessary to meet cash requirements of that installation. Amounts in excess of that amount shall be transferred to a single, department-wide nonappropriated morale, welfare, and recreation account of the military department.

(Added Pub. L. 103–337, div. A, title III, §373(a), Oct. 5, 1994, 108 Stat. 2736.)

§2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—(1) The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(2) The Comptroller of the Department of Defense[1] shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(b) ANNUAL REPORTING REQUIREMENT.—The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this title an assessment of whether major and nonmajor acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of the date of the enactment of the Federal Acquisition Streamlining Act of 1994. The Secretary shall use data from existing management systems in making the assessment.

(c) PERFORMANCE EVALUATION.—Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

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

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

(Added Pub. L. 103–355, title V, §5001(a)(1), Oct. 13, 1994, 108 Stat. 3349.)

REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b), is the date of enactment of Pub. L. 103–355, which was approved Oct. 13, 1994.

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Section 5001(b) of Pub. L. 103–355 provided that: ''Within one year after the date of the enactment of this Act [Oct. 13, 1994], the Secretary of Defense shall review the incentives and personnel actions available to the Secretary of Defense for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives to facilitate the achievement of goals approved or defined pursuant to section 2220(a) of title 10, United States Code. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

''(1) relate pay to performance (including the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, as added by subsection (a)); and

''(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, United States Code, as added by subsection (a).''

RECOMMENDED LEGISLATION

Section 5001(c) of Pub. L. 103–355 provided that: ''Not later than one year after the date of the enactment of this Act [Oct 13, 1994], the Secretary of Defense shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 2220 of title 10, United States Code, as added by subsection (a), and otherwise to facilitate and enhance

[1] So in original. Probably should be ''Under Secretary of Defense (Comptroller)''.

management of Department of Defense acquisition programs on the basis of performance.''

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

Sec.
2231. Reference to chapter 1803.

PRIOR PROVISIONS

A prior chapter 133 was transferred to end of part V of subtitle E of this title and renumbered chapter 1803.

§ 2231. Reference to chapter 1803

Provisions of law relating to facilities for reserve components are set forth in chapter 1803 of this title (beginning with section 18231).

(Added Pub. L. 103–337, div. A, title XVI, § 1664(b)(11), Oct. 5, 1994, 108 Stat. 3011.)

PRIOR PROVISIONS

Prior sections 2231 to 2239 were renumbered sections 18231 to 18239 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

Subchap. Sec.
I. Miscellaneous Authorities, Prohibitions, and Limitations on the Use of Appropriated Funds 2241
II. Miscellaneous Administrative Authority 2251

SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

Sec.
2241. Availability of appropriations for certain purposes.
2242. Authority to use appropriated funds for certain investigations and security services.
2243. Authority to use appropriated funds to support student meal programs in overseas dependents' schools.
2244. Security investigations.
2245. Use of aircraft for proficiency flying: limitation.
2246. Department of Defense golf courses: limitation on use of appropriated funds.
2247. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
2248. Purchase of surety bonds: prohibition.
2247.[1] Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.

AMENDMENTS

1994—Pub. L. 103–355, title VII, § 7202(a)(2), Oct. 13, 1994, 108 Stat. 3379, added item 2247 relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.

Pub. L. 103–337, div. A, title III, § 372(b), title X, § 1063(b), Oct. 5, 1994, 108 Stat. 2736, 2848, added item 2247 relating to use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation and item 2248.

1993—Pub. L. 103–160, div. A, title III, § 312(b), Nov. 30, 1993, 107 Stat. 1618, added item 2246.

1991—Pub. L. 102–190, div. A, title X, § 1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, made technical correction to directory language of Pub. L. 101–510, div. A, title XIV, § 1481(e)(2), Nov. 5, 1990, 104 Stat. 1706. See 1990 amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, § 1481(e)(2), Nov. 5, 1990, 104 Stat. 1706, as amended by Pub. L. 102–190, div. A, title X, § 1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, added item 2245.

Pub. L. 101–510, div. A, title IX, § 904(b), Nov. 5, 1990, 104 Stat. 1621, added item 2244.

1989—Pub. L. 101–189, div. A, title III, § 326(b), Nov. 29, 1989, 103 Stat. 1416, added item 2243.

§ 2241. Availability of appropriations for certain purposes

(a) OPERATION AND MAINTENANCE APPROPRIATIONS.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the following purposes:

(1) Morale, welfare, and recreation.

(2) Modification of personal property.

(3) Design of vessels.

(4) Industrial mobilization.

(5) Military communications facilities on merchant vessels.

(6) Acquisition of services, special clothing, supplies, and equipment.

(7) Expenses for the Reserve Officers' Training Corps and other units at educational institutions.

(b) NECESSARY EXPENSES.—Amounts appropriated to the Department of Defense may be used for all necessary expenses, at the seat of the Government or elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2253(b) and 2661(a) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

Subsection (b) of this section and sections 2242(1), (4) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Section 705 of Public Law 98–212, to be codified as 10 U.S.C. 2241(b), provides that defense appropriations may be used in connection with certain services and supplies ''as may be necessary to carry out the purposes of this Act''. The reference to ''this Act'' means Public Law 98–212, the FY84 Defense Appropriations Act. Language similar to section 705 had been enacted as part of the annual defense appropriation Act for many years. In the FY84 Act, section 705 was enacted as a permanent provision. The quoted phrase above was not, however, revised from the traditional annual wording as the provision had appeared in annual appropriations Acts in order to give it effect beyond the fiscal

[1] So in original. Probably should be ''2249''.

year concerned. Since the general purpose of a defense appropriations Act is to provide funds for national defense purposes, the committee, in codifying this provision, revised the quoted phrase so as to read ''that may be necessary for the national defense''. No change in meaning is intended.

INTERAGENCY COURIER SERVICE

Pub. L. 103–335, title VIII, §8119, Sept. 30, 1994, 108 Stat. 2649, provided that: ''During the current fiscal year and hereafter, the Department of State and the Department of Defense are authorized to provide interagency courier service on a non-reimbursable basis.''

RESTRICTIONS ON PROCUREMENTS FROM OUTSIDE OF UNITED STATES

Pub. L. 102–396, title IX, §9005, Oct. 6, 1992, 106 Stat. 1900, as amended by Pub. L. 103–139, title VIII, §8005, Nov. 11, 1993, 107 Stat. 1438; Pub. L. 103–355, title IV, §4401(e), Oct. 13, 1994, 108 Stat. 3348, provided that: ''During the current fiscal year and hereafter, no part of any appropriation or any other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold covered by section 2304(g) of title 10, United States Code, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand or measuring tools, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possessions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of agreements with foreign governments in which both governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act [22 U.S.C. 2776] and with section 2457 of title 10, United States Code: *Provided further*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions.''

PROHIBITION ON USE OF FUNDS TO PURCHASE DOGS OR CATS FOR MEDICAL TRAINING

Pub. L. 101–511, title VIII, §8019, Nov. 5, 1990, 104 Stat. 1879, provided that: ''None of the funds appropriated by this Act [see Tables for classification] or hereafter shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided*, That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community.''

RESTORATION, CANCELLATION, OR CLOSURE OF CERTAIN DEPARTMENT OF DEFENSE APPROPRIATION ACCOUNT BALANCES

Pub. L. 101–511, title VIII, §8080, Nov. 5, 1990, 104 Stat. 1893, provided that:

''(a) Upon the date of enactment of this Act [Nov. 5, 1990], the balances of any unobligated amount of an appropriation of the Department of Defense which has been withdrawn under the provisions of section 1552(a)(2) of title 31, United States Code, the obligated balance of which has not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code, shall be restored to that appropriation. Thirty days following enactment of this Act all balances of unobligated funds withdrawn from any account of the Department of Defense under the provisions of section 1552(a)(2) of title 31, United States Code, prior to the enactment of this Act, (other than those restored pursuant to the provisions of this subsection) are cancelled.

''(b) During the current fiscal year and thereafter—

''(1) on the 3rd September 30th after enactment of this section [Nov. 5, 1990], all obligated balances transferred under section 1552(a)(1) of title 31, United States Code;

''(2) on September 30th of the 5th fiscal year after the period of availability of an appropriation account of the Department of Defense available for obligation for a definite period ends or has ended, with respect to those accounts which, upon the date of enactment of this section have expired for obligation but whose obligated balances have not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code; and

''(3) with respect to any appropriation account made available to the Department of Defense for an indefinite period against which no obligations have been made for two consecutive years and upon a determination by the Secretary of Defense or the President that the purposes of such indefinite appropriation have been carried out,

any remaining obligated or unobligated balance of such accounts are closed and thereafter shall not be available for obligation or expenditure for any purpose: *Provided*, That collections authorized to be credited to an account which were not credited to the account before it was closed shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That, without prior action by the Comptroller General but without relieving the Comptroller General of the duty to make decisions under any law or to settle claims and accounts, when an account is closed (including accounts covered by subsection (a) of this section) and currently applicable appropriations of the Department of Defense are not chargeable, obligations and adjustments to obligations that would have been chargeable to an account prior to closing, may be chargeable to currently applicable appropriations of the Department of Defense available for the same purpose in amounts equal to one percent of the total appropriation for the current account or the amount of the original appropriation, whichever is less: *Provided further*, That after the end of the period of availability of an appropriation account available for a definite period and before closing of that account under this section such account shall be available for recording, adjusting, and liquidating obligations properly chargeable to such account in amounts not to exceed the unobligated expired balances of such appropriation: *Provided further*, That with respect to a change to a contract under which the contractor is re-

quired to perform additional work, other than adjustments to pay claims or increases under an escalation clause (hereinafter referred to as a contract change), if such a charge for such a contract change with respect to a program, project or activity would cause the total amount of such obligations to exceed $4,000,000 in any single fiscal year for a program, project, or activity, the obligation may only be made if the obligation is approved by the Secretary of Defense or, if such a change would cause the total amount of such obligations to exceed $25,000,000 in any single fiscal year for a program, project or activity, the obligation may be made only after 30 days have elapsed after the Secretary of Defense submits to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives [Committee on Armed Services of the House of Representatives now Committee on National Security] a notice of the intention to obligate such funds, together with the legal basis and the policy reasons for making such an obligation.

''(c) The provisions of this section shall apply to any appropriation account now or hereafter made unless the appropriation Act for that account specifically provides for an extension of the availability of such account and provides an exception to the five year period of availability for recording, adjusting and liquidating obligations properly chargeable to that account.''

AVAILABILITY OF APPROPRIATIONS

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1990, Pub. L. 101–165, title IX, §§9002, 9006, 9020, 9025, 9030, 9079, Nov. 21, 1989, 103 Stat. 1129, 1130, 1133–1135, 1147:

''SEC. 9002. [Authorized Secretaries of Defense, Army, Navy, and Air Force to procure services in accordance with section 3109 of Title 5, Government Organization and Employees, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals while traveling from their homes or places of business to official duty stations and return; and was repealed and restated in section 129b of this title by Pub. L. 101–510, div. A, title XIV, §1481(b)(1), (3), Nov. 5, 1990, 104 Stat. 1704, 1705.]

''SEC. 9006. [Provided that no appropriations available to the Department of Defense could be used for operating aircraft under the jurisdiction of the armed forces for the purpose of proficiency flying, as defined in Department of Defense Directive 1340.4, except in accordance with regulations prescribed by the Secretary of Defense; and was repealed and restated in section 2245 of this title by Pub. L. 101–510, div. A, title XIV, §1481(e)(1), (3), Nov. 5, 1990, 104 Stat. 1706.]

''SEC. 9020. [Provided that no funds available to the Department of Defense could be used to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department is reimbursed for the costs of providing such care; and was repealed and restated in section 2549 of this title by Pub. L. 101–510, div. A, title XIV, §1481(f)(1), (3), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9025. [Provided that no funds available to the Department of Defense could be used to lease to non-Federal agencies in the United States aircraft or vehicles owned or operated by the Department when suitable aircraft or vehicles are commercially available in the private sector; and was repealed and restated in section 2550 of this title by Pub. L. 101–510, div. A, title XIV, §1481(g)(1), (4), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9030. [Provided that funds available to the Department of Defense could be used by the Department for helicopters and motorized equipment at Defense installations for removal of feral burros and horses; and was repealed and restated in section 2678 of this title by Pub. L. 101–510, div. A, title XIV, §1481(h)(1), (3), Nov. 5, 1990, 104 Stat. 1708.]

''SEC. 9079. None of the funds appropriated by this Act or hereafter shall be obligated for the second career training program authorized by Public Law 96–347 [amending sections 2109, 3307, 3381 to 3385, and 8335 of Title 5, Government Organization and Employees].''

The following general provision, that had been repeated as fiscal year provision in prior appropriation acts, was enacted as permanent law in the Department of Defense Appropriations Act, 1989, Pub. L. 100–463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270–35, which provided that appropriations available to the Department of Defense for operation and maintenance could be used to pay claims authorized by law to be paid by the Department (except for civil functions), was repealed and restated in section 2732 of this title by Pub. L. 101–510, div. A, title XIV, §1481(j)(1), (3), Nov. 5, 1990, 104 Stat. 1708, 1709.

§ 2242. Authority to use appropriated funds for certain investigations and security services

The Secretary of Defense and the Secretary of each military department may—

(1) pay in advance for the expenses of conducting investigations in foreign countries incident to matters relating to the Department of Defense, to the extent such expenses are determined by the investigating officer to be necessary and in accord with local custom;

(2) pay expenses incurred in connection with the administration of occupied areas;

(3) pay expenses of military courts, boards, and commissions; and

(4) reimburse the Administrator of General Services for security guard services furnished by the Administrator to the Department of Defense for the protection of confidential files.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 844.)

HISTORICAL AND REVISION NOTES

Paragraphs (1) and (4) of this section and sections 2241(b) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, §705, Dec. 8, 1983, 97 Stat. 1437.

Paragraphs (2) and (3) are based on Pub. L. 99–190, §101(b) [title VIII, §§8005(a), 8006(a)], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203.

§ 2243. Authority to use appropriated funds to support student meal programs in overseas dependents' schools

(a) AUTHORITY.—Subject to subsection (b), amounts appropriated to the Department of Defense for the operation of the defense dependents' education system may be used by the Secretary of Defense to enable an overseas meal program to provide students enrolled in that system with meals at a price equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(b) LIMITATION.—The authority provided by subsection (a) may be used only if the Secretary of Defense determines that Federal payments and commodities provided under section 20 of the National School Lunch Act (42 U.S.C. 1769b) and section 20 of the Child Nutrition Act of 1966 (42 U.S.C. 1789) to support an overseas meal program are insufficient to provide meals under that program at a price for students equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(c) DETERMINING AVERAGE PRICE.—In determining the average price paid by students in the

United States for meals under a school meal program, the Secretary of Defense shall exclude free and reduced price meals provided pursuant to income guidelines.

(d) OVERSEAS MEAL PROGRAM DEFINED.—In this section, the term ''overseas meal program'' means a program administered by the Secretary of Defense to provide breakfasts or lunches to students attending Department of Defense dependents' schools which are located outside the United States.

(Added Pub. L. 101–189, div. A, title III, §326(a), Nov. 29, 1989, 103 Stat. 1415.)

§2244. Security investigations

(a) Funds appropriated to the Department of Defense may not be used for the conduct of an investigation by the Department of Defense, or by any other Federal department or agency, for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Defense determines both of the following:

(1) That a current, complete investigation file is not available from any other department or agency of the Federal Government with respect to that individual or facility.

(2) That no other department or agency of the Federal Government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(b) For purposes of subsection (a)(1), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Added Pub. L. 101–510, div. A, title IX, §904(a), Nov. 5, 1990, 104 Stat. 1621; amended Pub. L. 102–190, div. A, title X, §1061(a)(11), Dec. 5, 1991, 105 Stat. 1473.)

AMENDMENTS

1991—Subsec. (a)(1), (2). Pub. L. 102–190 substituted ''Government'' for ''government''.

§2245. Use of aircraft for proficiency flying: limitation

(a) An aircraft under the jurisdiction of a military department may not be used by a member of the armed forces for the purpose of proficiency flying except in accordance with regulations prescribed by the Secretary of Defense.

(b) Such regulations—

(1) may not require proficiency flying by a member except to the extent required for the member to maintain flying proficiency in anticipation of the member's assignment to combat operations; and

(2) may not permit proficiency flying in the case of a member who is assigned to a course of instruction of 90 days or more.

(c) In this section, the term ''proficiency flying'' has the meaning given that term in Department of Defense Directive 1340.4.

(Added Pub. L. 101–510, div. A, title XIV, §1481(e)(1), Nov. 5, 1990, 104 Stat. 1706.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, §9006, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(e)(3).

§2246. Department of Defense golf courses: limitation on use of appropriated funds

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to equip, operate, or maintain a golf course at a facility or installation of the Department of Defense.

(b) EXCEPTIONS.—(1) Subsection (a) does not apply to a golf course at a facility or installation outside the United States or at a facility or installation inside the United States at a location designated by the Secretary of Defense as a remote and isolated location.

(2) The Secretary of Defense shall prescribe regulations governing the use of appropriated funds under this subsection.

(Added Pub. L. 103–160, div. A, title III, §312(a), Nov. 30, 1993, 107 Stat. 1618.)

§2247.[1] Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to operate the Armed Forces Recreation Center, Europe.

(b) EXCEPTION.—Subsection (a) does not apply to the use of funds for the payment of utilities, real property maintenance, and transportation of products made in the United States.

(Added Pub. L. 103–337, div. A, title III, §372(a), Oct. 5, 1994, 108 Stat. 2735.)

§2248. Purchase of surety bonds: prohibition

Funds appropriated or otherwise made available to the Department of Defense for fiscal years 1995 through 1999 may not be obligated or expended for the purchase of surety bonds or other guarantees of financial responsibility in order to guarantee the performance of any direct function of the Department of Defense.

(Added Pub. L. 103–337, div. A, title X, §1063(a), Oct. 5, 1994, 108 Stat. 2848.)

§2247.[1] Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

(Added Pub. L. 103–355, title VII, §7202(a)(1), Oct. 13, 1994, 108 Stat. 3379.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355 set out as an Effective

[1] Another section 2247 is set out after section 2248.

[1] So in original. Probably should be ''§2249''.

Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

Sec.
2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii.
2252. Rewards: missing property.
2253. Motor vehicles.
2254. Treatment of reports of aircraft accident investigations.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, § 1071(a)(2), Oct. 23, 1992, 106 Stat. 2508, added item 2254.

§ 2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii

(a) IN GENERAL.—Subject to subsection (b), the Secretary of the military department concerned may—

(1) purchase household furnishings and automobiles from members of the armed forces and civilian employees of the Department of Defense on duty outside the United States or in Hawaii for resale at cost to incoming personnel; and

(2) provide household furnishings, without charge, in other than public quarters occupied by members of the armed forces or civilian employees of the Department of Defense who are on duty outside the United States or in Alaska or Hawaii.

(b) REQUIRED DETERMINATION.—The authority provided in subsection (a) may be used only when it is determined, under regulations approved by the Secretary of Defense, that the use of that authority would be advantageous to the United States.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–212, title VII, § 723, Dec. 8, 1983, 97 Stat. 1443.

§ 2252. Rewards: missing property

The Secretary of Defense and the Secretary of each military department may pay a reward of not more than $500 in any case for information leading to the discovery of missing property under the jurisdiction of that Secretary or leading to the recovery of such property.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(b)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

Similar provisions were contained in section 7209 of this title prior to repeal by section 1(e)(3)(A) of Pub. L. 100–370.

§ 2253. Motor vehicles

(a) GENERAL AUTHORITIES.—The Secretary of Defense and the Secretary of each military department may—

(1) provide for insurance of official motor vehicles in a foreign country when the laws of such country require such insurance; and

(2) purchase right-hand drive vehicles at a cost of not more than $12,000 each.

(b) HIRE OF PASSENGER VEHICLES.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the hire of passenger motor vehicles.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Subsection (a)(1) of this section and sections 2241(b) and 2242(1), (4) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Subsection (a)(2) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(i)], Dec. 19, 1985, 99 Stat. 1185, 1202.

Subsection (b) of this section and sections 2241(a) and 2661(a) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

§ 2254. Treatment of reports of aircraft accident investigations

(a) IN GENERAL.—(1) Whenever the Secretary of a military department conducts an accident investigation of an accident involving an aircraft under the jurisdiction of the Secretary, the records and report of the investigations shall be treated in accordance with this section.

(2) For purposes of this section, an accident investigation is any form of investigation of an aircraft accident other than an investigation (known as a ''safety investigation'') that is conducted solely to determine the cause of the accident and to obtain information that may prevent the occurrence of similar accidents.

(b) PUBLIC DISCLOSURE OF CERTAIN ACCIDENT INVESTIGATION INFORMATION.—(1) The Secretary concerned, upon request, shall publicly disclose unclassified tapes, scientific reports, and other factual information pertinent to an aircraft accident investigation, before the release of the final accident investigation report relating to the accident, if the Secretary concerned determines—

(A) that such tapes, reports, or other information would be included within and releasable with the final accident investigation report; and

(B) that release of such tapes, reports, or other information—

(i) would not undermine the ability of accident or safety investigators to continue to conduct the investigation; and

(ii) would not compromise national security.

(2) A disclosure under paragraph (1) may not be made by or through officials with responsibility for, or who are conducting, a safety investigation with respect to the accident.

(c) OPINIONS REGARDING CAUSATION OF ACCIDENT.—Following a military aircraft accident—

(1) if the evidence surrounding the accident is sufficient for the investigators who conduct the accident investigation to come to an opinion (or opinions) as to the cause or causes of

the accident, the final report of the accident investigation shall set forth the opinion (or opinions) of the investigators as to the cause or causes of the accident; and

(2) if the evidence surrounding the accident is not sufficient for those investigators to come to an opinion as to the cause or causes of the accident, the final report of the accident investigation shall include a description of those factors, if any, that, in the opinion of the investigators, substantially contributed to or caused the accident.

(d) USE OF INFORMATION IN CIVIL PROCEEDINGS.—For purposes of any civil or criminal proceeding arising from an aircraft accident, any opinion of the accident investigators as to the cause of, or the factors contributing to, the accident set forth in the accident investigation report may not be considered as evidence in such proceeding, nor may such information be considered an admission of liability by the United States or by any person referred to in those conclusions or statements.

(e) REGULATIONS.—The Secretary of each military department shall prescribe regulations to carry out this section.

(Added Pub. L. 102–484, div. A, title X, § 1071(a)(1), Oct. 23, 1992, 106 Stat. 2507.)

EFFECTIVE DATE

Section 1071(c) of Pub. L. 102–484 provided that: ''Section 2254 of title 10, United States Code, as added by subsection (a), shall apply with respect to accidents occurring on or after the date on which regulations are first prescribed under that section.''

REGULATIONS

Section 1071(b) of Pub. L. 102–484 provided that: ''Regulations under section 2254 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].''

[CHAPTER 135—REPEALED]

[§§ 2271 to 2279. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(1), Nov. 30, 1993, 107 Stat. 1704]

Section 2271, act Aug. 10, 1956, ch. 1041, 70A Stat. 123, related to competitions for designs of aircraft, aircraft parts, and aeronautical accessories.

Section 2272, act Aug. 10, 1956, ch. 1041, 70A Stat. 124, related to contracts to obtain designs submitted in design competitions.

Section 2273, acts Aug. 10, 1956, ch. 1041, 70A Stat. 125; Apr. 2, 1982, Pub. L. 97–164, title I, § 160(a)(4), 96 Stat. 48; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, related to right of United States to designs, rights of designers to patents, and rights to sue United States.

Section 2274, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, related to procurement for experimental purposes.

Section 2275, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, related to award of contracts and review of decisions.

Section 2276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 126; Sept. 7, 1962, Pub. L. 87–651, title I, § 131, 76 Stat. 514, related to inspection and audit of plants and books of contractors and provided criminal penalties for violations.

Section 2277, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to availability of appropriations.

Section 2278, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to purchases of sample aircraft.

Section 2279, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to restrictions on alien employees of contractors as to access to plans and specifications.

CHAPTER 137—PROCUREMENT GENERALLY

Sec.
[2301. Repealed.]
2302. Definitions.
2302a. Simplified acquisition threshold.
2302b. Implementation of simplified acquisition procedures.
2302c. Implementation of FACNET capability.
2303. Applicability of chapter.
[2303a. Repealed.]
2304. Contracts: competition requirements.
2304a.[1] Task and delivery order contracts: general authority.
2304b. Task order contracts: advisory and assistance services.
2304c. Task and delivery order contracts: orders.
2304d. Task and delivery order contracts: definitions.
2304a.[1] Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities.
2305. Contracts: planning, solicitation, evaluation, and award procedures.
2306. Kinds of contracts.
2306a. Cost or pricing data: truth in negotiations.
2306b. Multiyear contracts.
2307. Contract financing.
[2308. Repealed.]
2309. Allocation of appropriations.
2310. Determinations and decisions.
2311. Assignment and delegation of procurement functions and responsibilities.
2312. Remission of liquidated damages.
2313. Examination of records of contractor.
2314. Laws inapplicable to agencies named in section 2303 of this title.
2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes.
2316. Disclosure of identity of contractor.
[2317. Repealed.]
2318. Advocates for competition.
2319. Encouragement of new competitors.
2320. Rights in technical data.
2321. Validation of proprietary data restrictions.
[2322. Repealed.]
2323. Contract goal for small disadvantaged businesses and certain institutions of higher education.
2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education.
2324. Allowable costs under defense contracts.
[2325. Repealed.]
2326. Undefinitized contractual actions: restrictions.
2327. Contracts: consideration of national security objectives.
2328. Release of technical data under Freedom of Information Act: recovery of costs.
[2329, 2330. Repealed.]
2331. Contracts for professional and technical services.

AMENDMENTS

1994—Pub. L. 103–355, title I, §§ 1004(a)(2), 1022(a)(2), 1501(b), 1503(a)(2), (b)(2), 1506(b), title II, §§ 2001(i), 2201(a)(2), title IV, §§ 4002(b), 4203(a)(2), title VIII, § 8104(b)(2), title IX, § 9002(b), Oct. 13, 1994, 108 Stat. 3253, 3260, 3296–3298, 3303, 3318, 3338, 3346, 3391, 3402, struck out items 2301 ''Congressional defense procurement policy'', 2308 ''Assignment and delegation of procurement functions and responsibilities'', 2325 ''Preference for nondevelopmental items'', and 2329 ''Production special tooling and production special test equipment: con-

[1] So in original. Two sections 2304a have been enacted.

tract terms and conditions'', added items 2302a to 2302c, 2304a to 2304d, and 2306b, and substituted ''Contract financing'' for ''Advance payments'' in item 2307, ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' in item 2311, and ''Examination of records of contractor'' for ''Examination of books and records of contractor'' in item 2313.

1993—Pub. L. 103–160, div. A, title VIII, §§828(a)(1), 848(a)(2), Nov. 30, 1993, 107 Stat. 1713, 1725, added item 2304a and struck out item 2317 ''Encouragement of competition and cost savings''.

1992—Pub. L. 102–484, div. A, title VIII, §801(a)(2), (g)(2), title X, §1052(25)(B), div. D, title XLII, §4271(b)(2), Oct. 23, 1992, 106 Stat. 2442, 2445, 2500, 2695, struck out items 2322 ''Limitation on small business set-asides'' and 2330 ''Integrated financing policy'' and added items 2323 and 2323a.

1990—Pub. L. 101–510, div. A, title VIII, §§804(b), 834(a)(2), Nov. 5, 1990, 104 Stat. 1591, 1614, struck out item 2323 ''Commercial pricing for spare or repair parts'' and added item 2331.

1988—Pub. L. 100–456, div. A, title VIII, §801(a)(2), Sept. 29, 1988, 102 Stat. 2007, added item 2330.

1987—Pub. L. 100–180, div. A, title VIII, §810(a)(2), Dec. 4, 1987, 101 Stat. 1132, added item 2329.

Pub. L. 100–26, §7(a)(7)(B)(ii), (b)(9)(B), Apr. 21, 1987, 101 Stat. 278, 280, transferred item 2305a ''Major programs: competitive alternative sources'', to chapter 144 as item 2438 and substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in item 2328.

Pub. L. 100–26, §5(4), (6), made technical amendments to directory language of sections 926(a)(2) and 954(a)(2), respectively, of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(12), Nov. 14, 1986, 100 Stat. 3993, substituted ''competitors'' for ''competition'' in item 2319.

Pub. L. 99–500, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–138, 1783–141, 1783–155, 1783–165, 1783–169, 1783–173, and Pub. L. 99–591, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–138, 3341–141, 3341–155, 3341–165, 3341–169, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2), Nov. 14, 1986, 100 Stat. 3917, 3921, 3935, 3945, 3949, 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, §5(4), (6), Apr. 21, 1987, 101 Stat. 274, amended chapter analysis identically striking out ": cost or pricing data: truth in negotiations'' after ''contracts'' in item 2306, substituting ''spare or repair parts'' for ''supplies'' in item 2323, and adding items 2306a and 2325 to 2328.

1985—Pub. L. 99–145, title IX, §§911(a)(2), 912(a)(2), Nov. 8, 1985, 99 Stat. 685, 686, added items 2305a and 2324.

1984—Pub. L. 98–577, title III, §302(c)(2), Oct. 30, 1984, 98 Stat. 3077, struck out item 2303a ''Publication of proposed regulations''.

Pub. L. 98–525, title XII, §1217, Oct. 19, 1984, 98 Stat. 2599, added items 2303a and 2317 to 2323.

Pub. L. 98–369, div. B, title VII, §2727(a), July 18, 1984, 98 Stat. 1194, substituted ''Congressional defense procurement policy'' for ''Declaration of policy'' in item 2301, ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in item 2304, ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' in item 2305, and ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in item 2306.

1982—Pub. L. 97–295, §1(26)(B), Oct. 12, 1982, 96 Stat. 1291, added item 2316.

1981—Pub. L. 97–86, title IX, §908(a)(2), Dec. 1, 1981, 95 Stat. 1118, added item 2315.

1980—Pub. L. 96–513, title V, §511(75), Dec. 12, 1980, 94 Stat. 2926, inserted ''formal'' before ''advertising'' in item 2304.

CROSS REFERENCES

American material required for public use, see section 10a of Title 41, Public Contracts.

Cataloging and standardization of supplies, see section 2451 et seq. of this title.

Miscellaneous procurement provisions, see section 2381 et seq. of this title.

Particular provisions relating to Navy procurement, see section 7521 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 167, 2350b, 2350d, 2356, 2373, 2809, 2835, 2836, 2837 of this title; title 15 section 637; title 40 section 474; title 41 section 421; title 42 section 13556.

[§ 2301. Repealed. Pub. L. 103–355, title I, § 1501(a), Oct. 13, 1994, 108 Stat. 3296]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 127; Dec. 1, 1981, Pub. L. 97–86, title IX, §909(a), 95 Stat. 1118; July 18, 1984, Pub. L. 98–369, div. B, title VII, §2721, 98 Stat. 1185; Oct. 18, 1986, Pub. L. 99–500, §101(c) [title X, §925(a)], 100 Stat. 1783–82, 1783–153, and Oct. 30, 1986, Pub. L. 99–591, §101(c) [title X, §925(a)], 100 Stat. 3341–82, 3341–153; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, §925(a), 100 Stat. 3933, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, §3(5), 101 Stat. 273; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, §808(a), 106 Stat. 2449, related to Congressional defense procurement policy.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2302. Definitions

In this chapter:

(1) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

(2) The term ''competitive procedures'' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(A) procurement of architectural or engineering services conducted in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.);

(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15

U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The following terms have the meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403):

(A) The term ''procurement''.
(B) The term ''procurement system''.
(C) The term ''standards''.
(D) The term ''full and open competition''.
(E) The term ''responsible source''.
(F) The term ''item''.
(G) The term ''item of supply''.
(H) The term ''supplies''.
(I) The term ''commercial item''.
(J) The term ''nondevelopmental item''.
(K) The term ''commercial component''[1]
(L) The term ''component''.

(4) The term ''technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(5) The term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled ''Major Systems Acquisitions'', whichever is greater; or (C) the system is designated a ''major system'' by the head of the agency responsible for the system.

(6) The term ''Federal Acquisition Regulation'' means the Federal Acquisition Regulation issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)).

(7) The term ''simplified acquisition threshold'' has the meaning provided that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; July 29, 1958, Pub. L. 85–568, title III, § 301(b), 72 Stat. 432; Sept. 2, 1958, Pub. L. 85–861, § 1(43A), 72 Stat. 1457; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(74), 94 Stat. 2926; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2722(a), 98 Stat. 1186; Oct. 19, 1984, Pub. L. 98–525, title XII, § 1211, 98 Stat. 2589; Oct. 30, 1984, Pub. L. 98–577, title V, § 504(b)(3), 98 Stat. 3087; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1343(a)(13), 100 Stat. 3993; Apr. 21, 1987, Pub. L. 100–26, § 7(k)(2), 101 Stat. 284; Nov. 29, 1989, Pub. L. 101–189, div. A, title VIII, § 853(b)(1), 103 Stat. 1518; Apr. 6, 1991, Pub. L. 102–25, title VII, § 701(d)(1), 105 Stat. 113; Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 805, 105 Stat. 1417; Oct. 13, 1994, Pub. L. 103–355, title I, § 1502, 108 Stat. 3296.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302	41:158 (less clause (b)).	Feb. 19, 1948, ch. 65, § 9 (less clause (b)), 62 Stat. 24.

In clause (1), the words ''(if any)'' are omitted as surplusage. The words ''Secretary of the Treasury'' are substituted for the words ''Commandant, United States Coast Guard, Treasury Department'', since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of those functions to the agencies and employees of the Department of the Treasury.

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302(3)	[No source].	[No source].

The amendments reflect section 1(44) of the bill [amending section 2305 of Title 10].

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in par. (2)(A), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act is classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1994—Par. (3). Pub. L. 103–355, § 1502(1), added par. (3) and struck out former par. (3) which read as follows: ''The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).''

[1] So in original. Probably should be followed by a period.

Par. (7). Pub. L. 103–355, § 1502(2), added par. (7) and struck out former par. (7) which read as follows: ''The term 'small purchase threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000.''

1991—Par. (7). Pub. L. 102–190 inserted before period '', except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000''.

Pub. L. 102–25 added par. (7).

1989—Par. (6). Pub. L. 101–189 added par. (6).

1987—Pub. L. 100–26, § 7(k)(2)(A), inserted ''The term'' after each par. designation except par. (3) and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''.

1984—Pub. L. 98–369 amended section generally, substituting in cl. (1) ''the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force'' for ''the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force'', in cl. (2) definition of ''competitive procedures'' for a definition of ''negotiate'', and in cl. (3) definition of the terms ''full and open competition'' and ''responsible source'' for a definition of ''formal advertising''.

Cl. (2)(D), (E). Pub. L. 98–577 added subpars. (D) and (E).

Cls. (4), (5). Pub. L. 98–525 added cls. (4) and (5).

1980—Cl. (1). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1958—Cl. (1). Pub. L. 85–568 substituted ''Administrator of the National Aeronautics and Space Administration'' for ''Executive Secretary of the National Advisory Committee for Aeronautics'', in cl. (1).

Cl. (3). Pub. L. 85–861 substituted ''section 2305 of this title'' for ''section 2305(a) and (b) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 301(e) of Pub. L. 85–568 provided that: ''This section [amending this section, section 2303 of this title, section 22–1 of former Title 5, and sections 511 to 513 and 515 of Title 50, War and National Defense, and enacting provisions set out as a note under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act.''

SHORT TITLE OF 1986 AMENDMENT

Section 101(c) [title X, § 900] of Pub. L. 99–500 and Pub. L. 99–591, and section 900 of title IX of division A of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''This title [enacting sections 133a, 2306a, 2325–2328, 2365–2367, 2397b, 2397c, 2408, 2409, 2416, and 2435–2437 of this title, amending sections 133, 134, 135, 138, 171, 1622, 2301, 2304, 2305, 2306, 2320, 2321, 2323, 2384, 2406, 2411, 2413, 2432, and 2433 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 632, 637, and 644 of Title 15, Commerce and Trade, and section 416 of Title 41, Public Contracts, renumbering section 2416 as 2417 of this title, enacting provisions set out as notes under sections 113, 1621, 2304, 2305, 2306a, 2320, 2323, 2325–2328, 2365–2367, 2384, 2397b, 2406, 2408, 2409, 2416, 2432, 2435–2437 of this title and section 632 of Title 15, amending provisions set out as a note under this section, and repealing provisions set out as notes under section 2304 and 2397a of this title] may be cited as the 'Defense Acquisition Improvement Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 901, Nov. 8, 1985, 99 Stat. 682, provided that: ''This title [enacting sections 1621 to 1624, 2305a, 2324, 2397a, and 2406 of this title, amending sections 2304, 2313, 2320, 2323, 2397, and 2411 to 2415 of this title, section 759 of Title 40, Public Buildings, Property, and Works, sections 253 and 418a of Title 41, Public Contracts, and section 2168 of Title 50, Appendix, War and National Defense, enacting provisions set out as notes under this section and sections 139, 139c, 1622 to 1624, 2304, 2305a, 2307, 2324, 2397a, and 2411 of this title, section 287 of Title 18, Crimes and Criminal Procedure, section 3729 of Title 31, Money and Finance, and section 2168 of Title 50, Appendix, and amending provisions set out as a note under section 418a of Title 41] may be cited as the 'Defense Procurement Improvement Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1201 of title XII of Pub. L. 98–525 provided that: ''This title [enacting sections 2303a, 2317 to 2323, 2384a, 2402 to 2405, and 2411 to 2416 of this title, amending sections 139a, 139b, 2302, 2305, 2311, 2384, and 2401 of this title, enacting provisions set out as notes under this section and sections 139, 139a, 2303a, 2305, 2318, 2319, 2322, 2323, 2384, 2384a, 2392, and 2402 of this title, amending provisions set out as notes under sections 2392, 2401, and 2452 of this title, and repealing provisions set out as notes under section 2304 of this title] may be cited as the 'Defense Procurement Reform Act of 1984'.''

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Section 326 of Pub. L. 102–484 provided that:

''(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

''(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

''(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

''(II) in the event of a determination that the contract includes such a specification or standard,

whether the contract can be carried out through the use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

''(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

''(I) was awarded before June 1, 1993; and

''(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

''(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

''(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

''(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

''(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

''(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

''(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

''(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

''(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

''(5) The Secretary shall promptly transmit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] each [report] submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

''(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)).''

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102–190, div. A, title VIII, §806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102–484, div. A, title X, §1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103–355, title II, §2091, title VIII, §8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the following requirements:

''(1) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department of Defense shall promptly make available to such subcontractor or supplier the following information:

''(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

''(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

''(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(2) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

''(i) The name and address of the surety or sureties on the payment bond.

''(ii) The penal amount of the payment bond.

''(iii) A copy of the payment bond.

''(B) Subparagraph (A) applies to—

''(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

''(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

''(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

''(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

''(E) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(3) INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT BONDS.—(A) Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

''(B) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act for which a solicitation is issued after the ex-

piration of the 60-day period beginning on the effective date of the regulations promulgated under this subsection.

''(4) PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT TERMS.—(A) Under procedures established in the regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract that the subcontractor or supplier has not been paid by the prime contractor in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine the following:

''(i) With respect to a construction contract, whether the contractor has made progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code.

''(ii) With respect to a contract other than a construction contract, whether the contractor has made progress or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iii) With respect to either a construction contract or a contract other than a construction contract, whether the contractor has made final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iv) With respect to either a construction contract or a contract other than a construction contract, whether any certification of payment of the subcontractor or supplier accompanying the contractor's payment request to the Government is accurate.

''(B) If the contracting officer determines that the prime contractor is not in compliance with any matter referred to in clause (i), (ii), or (iii) of subparagraph (A), the contracting officer may, under procedures established in the regulations—

''(i) encourage the prime contractor to make timely payment to the subcontractor or supplier; or

''(ii) reduce or suspend progress payments with respect to amounts due to the prime contractor.

''(C) If the contracting officer determines that a certification referred to in clause (iv) of subparagraph (A) is inaccurate in any material respect, the contracting officer shall, under procedures established in the regulations, initiate appropriate administrative or other remedial action.

''(D) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date of promulgation of the regulations under this subsection or that is awarded after such date.

''(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act [41 U.S.C. 403(12)]).

''(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 25(a) of the Office of Federal Procurement Policy Act) shall modify the Federal Acquisition Regulation (issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.

''(d) ASSISTANCE TO SMALL BUSINESS CONCERNS.—[Amended section 15(k)(5) of the Small Business Act (15 U.S.C. 644(k)(5)).]

''(e) GAO REPORT.—(1) The Comptroller General of the United States shall conduct an assessment of the matters described in paragraph (2) and submit a report pursuant to paragraph (3).

''(2) In addition to such other related matters as the Comptroller General considers appropriate, the matters to be assessed pursuant to paragraph (1) are the following:

''(A) Timely payment of progress or other periodic payments to subcontractors and suppliers by prime contractors on Federal contracts by—

''(i) identifying all existing statutory and regulatory provisions, categorized by types of contracts covered by such provisions;

''(ii) evaluating the feasibility and desirability of requiring that a prime contractor (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) be required to—

''(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

''(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

''(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

''(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

''(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

''(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

''(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

''(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

''(I) timely payment of progress payments due in accordance with their subcontracts; and

''(II) ultimate payment of such amounts due;

''(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

''(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

''(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

''(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

''(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

''(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

''(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

''(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

''(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

''(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

''(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

''(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business of the Senate and House of Representatives.

''(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

''(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

''(g) MILLER ACT DEFINED.—For purposes of this section, the term 'Miller Act' means the Act of August 24, 1935 (40 U.S.C. 270a–270d).''

ADVISORY PANEL ON STREAMLINING AND CODIFYING ACQUISITION LAWS

Pub. L. 101–510, div. A, title VIII, § 800, Nov. 5, 1990, 104 Stat. 1587, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Under Secretary of Defense for Acquisition and Technology, not later than Jan. 15, 1991, to establish under sponsorship of Defense Systems Management College an advisory panel on streamlining and codifying acquisition laws, to review the acquisition laws applicable to Department of Defense with a view toward streamlining the defense acquisition process, to make any recommendations for repeal or amendment of such laws that the panel considers necessary, as a result of such review, and to prepare a proposed code of relevant acquisition laws, directed the advisory panel, not later than Dec. 15, 1992, to transmit a final report on the actions of the panel to the Under Secretary of Defense for Acquisition and Technology, and directed the Secretary of Defense, not later than Jan. 15, 1993, to transmit the final report, together with such comments as he deems appropriate, to Congress.

MENTOR-PROTEGE PILOT PROGRAM

Section 807(a) of Pub. L. 102–484 provided that: ''Within 15 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall publish in the Department of Defense Supplement to the Federal Acquisition Regulation the Department of Defense policy for the pilot Mentor-Protege Program and the regulations, directives, and administrative guidance pertaining to such program as such policy, regulations, directives, and administrative guidance existed on December 6, 1991. Proposed modifications to that policy and any amendments of the matters published pursuant to the preceding sentence that are proposed in order to implement any of the amendments made by this section shall be published for public comment within 60 days after the date of the enactment of this Act and shall be published in final form within 120 days after such date.''

Pub. L. 101–510, div. A, title VIII, § 831, Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–25, title VII, § 704(c), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–172, title VIII, § 8064A, Nov. 26, 1991, 105 Stat. 1186; Pub. L. 102–190, div. A, title VIII, § 814(b), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–484, div. A, title VIII, §§ 801(h)(4), 807(b)(1), title X, § 1054(d), Oct. 23, 1992, 106 Stat. 2445, 2448, 2503; Pub. L. 103–160, div. A, title VIII, § 813(b)(1), (c), Nov. 30, 1993, 107 Stat. 1703, provided that:

''(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the 'Mentor-Protege Program'.

''(b) PURPOSE.—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts in order to increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

''(c) PROGRAM PARTICIPANTS.—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a 'mentor firm'.

''(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement to receive such assistance at any time. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a 'protege firm'.

''(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

''(d) MENTOR FIRM ELIGIBILITY.—Subject to subsection (c)(1), a mentor firm eligible for award of Federal contracts may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if—

''(1) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

''(2) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

''(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

''(1) A developmental program for the protege firm, in such detail as may be reasonable, including (A) factors to assess the protege firm's developmental progress under the program, and (B) the anticipated number and type of subcontracts to be awarded the protege firm.

''(2) A program participation term, which shall not exceed five years and may be renewed upon its expiration for an additional term of not to exceed four years.

''(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

''(f) FORMS OF ASSISTANCE.—A mentor firm may provide a protege firm the following:

''(1) Assistance, by using mentor firm personnel, in—

''(A) general business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

''(B) engineering and technical matters such as production, inventory control, and quality assurance; and

''(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

''(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

''(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

''(4) Advance payments under such subcontracts.

''(5) Loans.

''(6) Cash in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest.

''(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

''(C) a historically Black college or university or a minority institution of higher education.

''(g) INCENTIVES FOR MENTOR FIRMS.—(1) The Secretary of Defense shall provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

''(2)(A) The Secretary of Defense shall provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (7) of subsection (f). The Secretary shall ensure that the reimbursement is provided for—

''(i) as a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract;

''(ii) as a reimbursement of indirect costs incurred under the program which have been assigned to indirect cost pools, to the extent that such assigned costs are otherwise reasonable, allocable, and allowable;

''(iii) in a separate contract, cooperative agreement, or other agreement entered into between the Secretary and the mentor firm for the purpose of providing reimbursement of costs incurred under the program, subject to a maximum amount of reimbursement specified in such contract or agreement; or

''(iv) through a combination of the methods of reimbursement described in clauses (i), (ii), and (iii), but only if the mentor firm has an accounting system and controls adequate to assure proper identification and assignment of program costs to appropriate direct and indirect cost accounts.

''(B) The Secretary and a mentor firm may provide for the allocation of such costs to any Department of Defense contract awarded to the mentor firm.

''(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to either subparagraph (A) or (C) of paragraph (2) or are reimbursed pursuant to subparagraph (B) of such paragraph shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

''(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—

''(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(7);

''(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

''(iii) two times the total amount of any other such costs.

''(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

''(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

''(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

''(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

''(h) RELATIONSHIP TO SMALL BUSINESS ACT.—(1) For purposes of the Small Business Act [15 U.S.C. 631 et

seq.], no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

''(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

''(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

''(i) PARTICIPATION IN MENTOR-PROTEGE PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

''(j) DURATION OF PILOT PROGRAM.—(1) Business concerns eligible to participate in the program may enter into mentor-protege agreements pursuant to subsection (e) during the period commencing on October 1, 1991, and ending on September 30, 1995.

''(2) A mentor firm may not incur costs furnishing developmental assistance to a protege firm that are eligible for reimbursement pursuant to subsection (g) prior to October 1, 1991, or after September 30, 1996.

''(3) A mentor firm may receive credit toward the attainment of such firm's goals for subcontract awards to disadvantaged small business concerns for unreimbursed costs incurred in providing developmental assistance to the firm's protege firms, pursuant to subsection (g)(3), for the period beginning October 1, 1991, and ending September 30, 1999.

''(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

''*(l)* GENERAL ACCOUNTING OFFICE ASSESSMENT.—(1) The General Accounting Office shall evaluate the implementation of the Mentor-Protege Program established pursuant to subsection (a) to determine whether the purposes of the program, as stated in subsection (b), have been attained.

''(2) A report of the evaluation conducted by the General Accounting Office pursuant to subsection (a) shall be furnished to the Committees on Armed Services and Small Business of the Senate and House of Representatives by February 1, 1994. Such report shall cover the period October 1, 1991, through September 30, 1993. Recommendations shall be included regarding reauthorization of the program, and extending its application on a Government-wide basis.

''(3) An interim report shall be furnished to the Committees on Armed Services of the Senate and House of Representatives by March 30, 1992. The interim report shall—

''(A) evaluate the regulatory implementation of the program by the Department of Defense;

''(B) assess initial participation by firms eligible to be mentor firms or protege firms;

''(C) identify deficiencies, if any, in the statutory or regulatory framework of the program likely to impair the success of the program; and

''(D) make recommendations to correct any implementational impediments identified.

''(m) DEFINITIONS.—In this section:

''(1) The term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

''(2) The term 'disadvantaged small business concern' means:

''(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

''(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

''(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)); or

''(D) a qualified organization employing the severely disabled.

''(3) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

''(4) The term 'historically Black college and university' means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code.

''(5) The term 'minority institution of higher education' means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

''(6) The term 'subcontracting participation goal', with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code, and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

''(7) The term 'qualified organization employing the severely disabled' means a business entity operated on a for-profit or nonprofit basis that—

''(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

''(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

''(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

''(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

''(8) The term 'severely disabled individual' means an individual who has a physical or mental disability which constitutes a substantial handicap to employment and which, in accordance with criteria prescribed by the Committee for the Purchase From the Blind and Other Severely Handicapped established by the first section of the Act of June 25, 1938 (41 U.S.C. 46; popularly known as the 'Wagner-O'Day Act'), is of such a nature that the individual is otherwise prevented from engaging in normal competitive employment.

''(n) AVAILABILITY OF FUNDING.—Funds authorized and appropriated to carry out the program shall remain available until September 30, 1999.''

[Section 807(b)(2) of Pub. L. 102–484 provided that: ''The amendment made by this subsection [amending section 831 of Pub. L. 101–510, set out above] shall take effect as of November 5, 1990.'']

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, which provided credit for Indian contracting in meeting certain minority contracting goals, was repealed and restated in section 2323a of this title by Pub. L. 102–484, § 801(g)(1)(B), (h)(5).

EQUITABLE PARTICIPATION OF AMERICAN SMALL AND MINORITY-OWNED BUSINESS IN FURNISHING OF COMMODITIES AND SERVICES

Pub. L. 101–165, title IX, § 9004, Nov. 21, 1989, 103 Stat. 1129, provided that: ''During the current fiscal year and hereafter, the Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act [see Tables for classification] by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act.''

REQUIREMENT FOR SUBSTANTIAL PROGRESS ON MINORITY AND SMALL BUSINESS CONTRACT AWARDS

Pub. L. 100–180, div. A, title VIII, § 806(a)–(c), Dec. 4, 1987, 101 Stat. 1126, 1127, directed Secretary of Defense to issue regulations to ensure that substantial progress was made in increasing awards of Department of Defense contracts to small business concerns, historically Black colleges and universities, and minority institutions described in section 1207(a) of Pub. L. 99–661 [formerly set out below], prior to repeal by Pub. L. 102–484, div. A, title VIII, § 801(h)(7), Oct. 23, 1992, 106 Stat. 2446.

DEFINITIONS; RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

Pub. L. 100–26, §§ 2, 6, Apr. 21, 1987, 101 Stat. 273, 274, provided that:

''SEC. 2. REFERENCES TO 99TH CONGRESS LAWS

''For purposes of this Act [Pub. L. 100–26, see Short Title of 1987 Amendment note set out under section 101 of this title]:

''(1) The term 'Defense Authorization Act' means the Department of Defense Authorization Act, 1987 (division A of Public Law 99–661; 100 Stat. 3816 et seq.).

''(2) The term 'Defense Appropriations Act' means the Department of Defense Appropriations Act, 1987 (as contained in identical form in section 101(c) of Public Law 99–500 (100 Stat. 1783–82 et seq.) and section 101(c) of Public Law 99–591 (100 Stat. 3341–82 et seq.)).

''(3) The term 'Defense Acquisition Improvement Act' means title X of the Defense Appropriations Act [100 Stat. 1783–130, 3341–130] and title IX of the Defense Authorization Act [100 Stat. 3910] (as designated by the amendment made by section 3(5) [section 3(5) of Pub. L. 100–26]). Any reference in this Act to the Defense Acquisition Improvement Act shall be considered to be a reference to each such title.''

''SEC. 6. CONSTRUCTION OF DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS

''(a) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—(1) In applying the provisions of Public Laws 99–500, 99–591, and 99–661 described in paragraph (2)—

''(A) the identical provisions of those public laws referred to in such paragraph shall be treated as having been enacted only once, and

''(B) in executing to the United States Code and other statutes of the United States the amendments made by such identical provisions, such amendments shall be executed so as to appear only once in the law as amended.

''(2) Paragraph (1) applies with respect to the provisions of the Defense Appropriations Act and the Defense Authorization Act (as amended by sections 3, 4, 5, and 10(a)) referred to across from each other in the following table:

''Section 101(c) of Public Law 99–500	Section 101(c) of Public Law 99–591	Division A of Public Law 99–661
''Title X	Title X	Title IX
''Sec. 9122	Sec. 9122	Sec. 522
''Sec. 9036(b)	Sec. 9036(b)	Sec. 1203
''Sec. 9115	Sec. 9115	Sec. 1311

''(b) RULE FOR DATE OF ENACTMENT.—(1) The date of the enactment of the provisions of law listed in the middle column, and in the right-hand column, of the table in subsection (a)(2) shall be deemed to be October 18, 1986 (the date of the enactment of Public Law 99–500).

''(2) Any reference in a provision of law referred to in paragraph (1) to 'the date of the enactment of this Act' shall be treated as a reference to October 18, 1986.''

[For classification of provisions listed in the table, see Tables.]

CONTRACT GOAL FOR MINORITIES

Section 1207 of Pub. L. 99–661, as amended by Pub. L. 100–180, div. A, title VIII, § 806(d), 101 Stat. 1127; Pub. L. 100–456, div. A, title VIII, § 844, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–189, div. A, title VIII, § 831, Nov. 29, 1989, 103 Stat. 1507; Pub. L. 101–510, div. A, title VIII, §§ 811, 832, title XIII, §§ 1302(d), 1312(b), Nov. 5, 1990, 104 Stat. 1596, 1612, 1669, 1670; Pub. L. 102–25, title VII, §§ 704(a)(6), 705(e), Apr. 6, 1991, 105 Stat. 118, 120, which set contract goals for small disadvantaged businesses and certain institutions of higher education, was repealed and restated in section 2323 of this title by Pub. L. 102–484, § 801(a)(1)(B), (h)(1).

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99–145, title IX, § 913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101–510, div. A, title XIII, § 1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

''(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code.''

DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Section 1202 of Pub. L. 98–525, as amended by Pub. L. 99–500, § 101(c) [title X, § 953(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 953(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(c), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Congress finds that recent disclosures of excessive

payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

''(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

''(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

''(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

''(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

''(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.''

MODIFICATION OF REGULATIONS AND DIRECTIVES TO ACCOMMODATE A POLICY OF MULTIYEAR PROCUREMENT

Section 909(d) of Pub. L. 97–86 directed Secretary of Defense, not later than the end of the 90-day period beginning Dec. 1, 1981, to issue such modifications to existing regulations governing defense acquisitions as might be necessary to implement the amendments made by subsections (a), (b), and (c) [amending sections 139, 2301, and 2306 of this title] and directed Director of the Office of Management and Budget to issue such modifications to existing Office of Management and Budget directives as might be necessary to take into account the amendments made by subsections (a) and (b) [amending sections 2301 and 2306 of this title].

PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406, which prohibited contracts by the Department of Defense for other than American goods after Aug. 5, 1974, unless adequate consideration was first given to bids of firms in labor surplus areas of the United States, of small business firms, and of all other United States firms which had offered to furnish American goods, balance of payments, cost of shipping other than American goods, and any duty, tariff, or surcharge on such goods, was repealed and restated in section 2501 of this title by Pub. L. 100–370, § 3(a), (c). Section 2501 of this title was renumbered section 2506 by Pub. L. 100–456, § 821(b)(1)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1737, 2304, 2366, 2367, 2397b, 2399, 2403, 2409 of this title; title 50 App. section 2171.

§ 2302a. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisition threshold is as specified in section 4(11) of the Office of Federal Procurement Policy Act.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 33 of the Office of Federal Procurement Policy Act shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103–355, title IV, §§ 4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340.)

REFERENCES IN TEXT

Sections 4(11) and 33 of the Office of Federal Procurement Policy Act, referred to in subsecs. (a) and (b), respectively, are classified to sections 403(11) and 429, respectively, of Title 41, Public Contracts.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–355, § 4102(a), added subsec. (b).

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2302b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 31 of the Office of Federal Procurement Policy Act shall apply as provided in such section to the agencies named in section 2303(a) of this title.

(Added Pub. L. 103–355, title IV, § 4203(a)(1), Oct. 13, 1994, 108 Stat. 3345.)

REFERENCES IN TEXT

Section 31 of the Office of Federal Procurement Policy Act, referred to in text, is classified to section 427 of Title 41, Public Contracts.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2302c. Implementation of FACNET capability

(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each agency named in section 2303 of this title shall implement the Federal acquisition computer network (''FACNET'') capability required by section 30 of the Office of Federal Procurement Policy Act. In the case of the Department of Defense, the implementation shall be by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, for the Department of Defense as a whole. For purposes of this section, the term ''head of an agency'' does not include the Secretaries of the military departments.

(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an agency shall consult with the Administrator for Federal Procurement Policy.

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303 of this title shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(Added Pub. L. 103–355, title IX, § 9002(a), Oct. 13, 1994, 108 Stat. 3402.)

REFERENCES IN TEXT

Section 30 of the Office of Federal Procurement Policy Act, referred to in subsec. (a), is classified to section 426 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 9002(c) of Pub. L. 103–355 provided that: ''A FACNET capability may be implemented and used in an agency before the promulgation of regulations implementing this section (as provided in section 10002) [set out as a Regulations note under section 251 of Title 41, Public Contracts]. If such implementation and use occurs, the period for submission of bids or proposals under section 18(a)(3)(B) of the Office of Federal Procurement Policy Act [41 U.S.C. 416(a)(3)(B)], in the case of a solicitation through FACNET, may be less than the period otherwise applicable under that section, but shall be at least 10 days. The preceding sentence shall not be in effect after September 30, 1995.''

§ 2303. Applicability of chapter

(a) This chapter applies to the procurement by any of the following agencies, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

(1) The Department of Defense.
(2) The Department of the Army.
(3) The Department of the Navy.
(4) The Department of the Air Force.
(5) The Coast Guard.
(6) The National Aeronautics and Space Administration.

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; July 29, 1958, Pub. L. 85–568, title III, § 301(b), 72 Stat. 432; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2722(b), 98 Stat. 1187.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2303(a)	41:151(a).	Feb. 19, 1948, ch. 65, §§ 2(a), 9 (clause (b)), 62 Stat. 21, 24.
2303(b)	41:158 (clause (b), less last 5 words).	
2303(c)	41:158 (last 5 words of clause (b)).	

In subsection (a), the words ''all property named in subsection (b), and all services'' are substituted for the words ''for supplies or services''. The words ''(each being hereinafter called the agency)'', are omitted, since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words ''United States'' before the words ''Coast Guard'' are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word ''supplies''. Throughout the revised chapter reference is made to ''property or services covered by this chapter'', instead of ''supplies'', since the word ''supplies'' is defined in section 101(26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101(26) of this title. The word ''ships'' and the words ''of every character, type, and description'', after the word ''vessels'', are omitted as covered by the definition of ''vessel'' in section 1 of title 1.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, § 2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) ''procurement'' for ''purchase, and contract to purchase,'' and ''(other than land) and all services'' for ''named in subsection (b), and all services,''.

Subsec. (a)(1) to (6). Pub. L. 98–369, § 2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98–369, § 2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

1958—Subsec. (a)(5). Pub. L. 85–568 substituted ''The National Aeronautics and Space Administration'' for ''The National Advisory Committee for Aeronautics''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90–500, title IV, § 404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

CROSS REFERENCES

Facilitation of procurement procedures, see section 252 of Title 41, Public Contracts.

Laws inapplicable to agencies named in this section, see section 2314 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302a, 2302b, 2302c, 2304, 2307, 2309, 2311, 2314, 2318, 2320, 2374, 2384a, 2409, 2410 of this title.

[§ 2303a. Repealed. Pub. L. 98–577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98–525, title XII, § 1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations. See section 418b of Title 41, Public Contracts.

Section, pursuant to section 1212(b) of Pub. L. 98–525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98–525. Pub. L. 98–525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98–577.

§ 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (j), a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d)(1) For the purposes of applying subsection (c)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the

property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii), (iii), or (iv);

(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A));

(iii) in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $50,000,000), by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) or the senior procurement executive's delegate designated pursuant to paragraph (6)(B), or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); or

(iv) in the case of a contract for an amount exceeding $50,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation) or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); and

(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7);

(D) in the case of a procurement conducted under (i) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act, or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(E) in the case of a procurement permitted by subsection (c)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures and such document is approved by the competition advocate for the procuring activity.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(4) The justification required by paragraph (1)(A) and any related information, and any doc-

ument prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.

(5) In no case may the head of an agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(6)(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

(B) The authority of the senior procurement executive under paragraph (1)(B)(iii) may be delegated only to an officer or employee within the senior procurement executive's organization who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position in grade GS–16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees).

(C) The authority of the Under Secretary of Defense for Acquisition and Technology under paragraph (1)(B)(iv) may be delegated only to—

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

(3) In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(h) For the purposes of the following laws, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) The Act entitled ''An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes'', approved June 30, 1936 (commonly referred to as the ''Walsh-Healey Act'') (41 U.S.C. 35–45).

(2) The Act entitled ''An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes'', approved March 3, 1931 (commonly referred to as the ''Davis-Bacon Act'') (40 U.S.C. 276a—276a–5).

(i)(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 2302(2) of this title.

(2) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(j)(1) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(4) This subsection shall not apply with respect to any contract that calls upon the Na-

tional Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Aug. 28, 1958, Pub. L. 85–800, § 8, 72 Stat. 967; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(12), 72 Stat. 1565; Sept. 10, 1962, Pub. L. 87–653, § 1(a)–(c), 76 Stat. 528; Mar. 16, 1968, Pub. L. 90–268, § 5, 82 Stat. 50; Sept. 20, 1968, Pub. L. 90–500, title IV, § 405, 82 Stat. 851; July 25, 1974, Pub. L. 93–356, § 4, 88 Stat. 390; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(76), 94 Stat. 2926; Dec. 1, 1981, Pub. L. 97–86, title IX, § 907(a), 95 Stat. 1117; Oct. 12, 1982, Pub. L. 97–295, § 1(24), 96 Stat. 1290; Dec. 21, 1982, Pub. L. 97–375, title I, § 114, 96 Stat. 1821; July 18, 1984, Pub. L. 98–369, div. B, title VII, §§ 2723(a), 2727(b), 98 Stat. 1187, 1194; Oct. 30, 1984, Pub. L. 98–577, title V, § 504(b)(1), (2), 98 Stat. 3086; Nov. 8, 1985, Pub. L. 99–145, title IX, § 961(a)(1), title XIII, § 1303(a)(13), 99 Stat. 703, 739; Oct. 18, 1986, Pub. L. 99–500, § 101(c) [title X, §§ 923(a)–(c), 927(a)], 100 Stat. 1783–82, 1783–152, 1783–155, and Oct. 30, 1986, Pub. L. 99–591, § 101(c) [title X, §§ 923(a)–(c), 927(a)], 100 Stat. 3341–82, 3341–152, 3341–155; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 923(a)–(c), 927(a), title XIII, § 1343(a)(14), 100 Stat. 3932, 3935, 3993, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, § 3(5), 101 Stat. 273; Apr. 21, 1987, Pub. L. 100–26, § 7(d)(3), 101 Stat. 281; Sept. 29, 1988, Pub. L. 100–456, div. A, title VIII, § 803, 102 Stat. 2008; Nov. 29, 1989, Pub. L. 101–189, div. A, title VIII, §§ 812, 817, 818, 853(d), 103 Stat. 1493, 1501, 1502, 1519; Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 806(b), 104 Stat. 1592; Apr. 6, 1991, Pub. L. 102–25, title VII, § 701(d)(2), 105 Stat. 114; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, §§ 801(h)(2), 816, title X, § 1052(23), 106 Stat. 2445, 2454, 2500; Nov. 30, 1993, Pub. L. 103–160, div. A, title IX, § 904(d)(1), 107 Stat. 1728; Oct. 13, 1994, Pub. L. 103–355, title I, §§ 1001–1003, 1004(b), 1005, title IV, § 4401(a), title VII, § 7203(a)(1), 108 Stat. 3249, 3253, 3254, 3347, 3379.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2304(a)	41:151(c) (less proviso of clause (11) and proviso of clause (16)).	Feb. 19, 1948, ch. 65, §§ 2(b) (less 1st sentence), (c), (e), 7(d), 8, 62 Stat. 21, 22, 24.
2304(b).	41:156(d).	
2304(c)	41:151(e).	
2304(d)	41:151(b) (less 1st sentence).	
2304(e)	41:151(c) (proviso of clause (11) and proviso of clause (16)).	
2304(f)	41:157.	

In subsection (a)(1), the words ''the period of'' are omitted as surplusage.

In subsections (a)(4)–(10), and (12)–(15), the words ''the purchase or contract is'' are inserted for clarity.

In subsection (a)(5), the words ''to be rendered'' are omitted as surplusage.

In subsection (a)(6), the words ''its Territories'' are inserted for clarity. The words ''the limits of'' are omitted as surplusage.

In subsection (a)(14), the words ''and for which'' are substituted for the word ''when''.

In subsection (a)(15), the words ''and for which'' are substituted for 41:151(c)(15) (1st 22 words of proviso).

In subsection (a)(16), the words ''to have'' are substituted for the words ''be made or kept''.

In subsection (a)(17), the first 7 words are inserted for clarity.

In subsection (b), the words ''shall be kept'' are substituted for the words ''shall be preserved in the files''. The words ''six years after the date'' are substituted for the words ''a period of six years following''.

In subsection (c), the words ''but such authorization shall be required in the same manner as heretofore'' and ''continental'', in 41:151(e), are omitted as surplusage.

In subsection (d), the words ''before making'' are substituted for the words ''Whenever it is proposed to make''.

In subsection (e), the words ''beginning six months after the effective date of this chapter'' are omitted as executed. The words ''on May 19 and November 19 of each year'' are substituted for the words ''and at the end of each six-month period thereafter'', since the effective date of the source statute was May 19, 1948, and the first report was made on November 19, 1948. The words ''property and services covered by each contract'' are substituted for the words ''work required to be performed thereunder''.

1958 ACT

The change is necessary to reflect the present Commonwealth status of Puerto Rico.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2304(a) (1st sentence).	10:2304 (note).	Mar. 16, 1967, Pub. L. 90–5, § 304, 81 Stat. 6.
2304(f)(1)	10:2304(f)(1).	
2304(i)	10:2304 (note).	Sept. 21, 1977, Pub. L. 95–111, § 836, 91 Stat. 906.

In subsection (a), the words ''The Secretary of Defense is hereby directed that insofar as practicable all contracts shall be formally advertised'' are omitted as unnecessary because of 10:2304(a) (1st sentence).

Subsection (f)(1) is amended to correct a mistake in spelling.

In subsection (i)(1)(B), the words ''or States'' are omitted because of 1:1.

REFERENCES IN TEXT

The Wagner-O'Day Act, referred to in subsec. (f)(2)(D), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The Walsh-Healey Act (41 U.S.C. 35–45), referred to in subsec. (h)(1), is act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, which is classified generally to sections 35 to 45 of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

The Davis-Bacon Act (40 U.S.C. 276a—276a–5), referred to in subsec. (h)(2), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (a)(1)(A). Pub. L. 103–355, § 1001(1), substituted ''Federal Acquisition Regulation'' for ''modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)''.

Subsec. (b)(1)(D) to (F). Pub. L. 103–355, §1002(a), added subpars. (D) to (F).

Subsec. (b)(4). Pub. L. 103–355, §1002(b), added par. (4).

Subsec. (c)(3)(C). Pub. L. 103–355, §1005, added subpar. (C).

Subsec. (c)(5). Pub. L. 103–355, §7203(a)(1)(A), inserted ''subject to subsection (j),'' after ''(5)''.

Subsec. (f)(1)(B)(i). Pub. L. 103–355, §1003, inserted before semicolon at end ''or by an official referred to in clause (ii), (iii), or (iv)''.

Subsec. (g)(1). Pub. L. 103–355, §§1001(2), 4401(a)(1), substituted ''Federal Acquisition Regulation'' for ''regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)'' and ''purchases of property and services for amounts not greater than the simplified acquisition threshold'' for ''small purchases of property and services''.

Subsec. (g)(2). Pub. L. 103–355, §4401(a)(4), substituted ''simplified acquisition threshold'' for ''small purchase threshold'' and ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''For the purposes of this subsection, a small purchase is a purchase or contract for an amount which does not exceed the small purchase threshold.''

Subsec. (g)(3). Pub. L. 103–355, §4401(a)(5), substituted ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3).

Subsec. (j). Pub. L. 103–355, §7203(a)(1)(B), added subsec. (j).

Pub. L. 103–355, §1004(b), struck out subsec. (j) which related to authority of Secretary of Defense to enter into master agreements for advisory and assistance services.

1993—Subsec. (f)(1)(B)(iii), (iv), (6)(C). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(2). Pub. L. 102–484, §801(h)(2), substituted ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (j)(3)(A). Pub. L. 102–484, §1052(23), substituted ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' for ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))''.

Subsec. (j)(5). Pub. L. 102–484, §816, substituted ''on September 30, 1994.'' for ''at the end of the three-year period beginning on the date on which final regulations prescribed to carry out this subsection take effect.''

1991—Subsec. (g)(2). Pub. L. 102–25, §701(d)(2)(A)(i), substituted ''subsection'' for ''chapter''.

Subsec. (g)(5). Pub. L. 102–25, §701(d)(2)(A)(ii), struck out par. (5) which provided that in this subsection, the term ''small purchase threshold'' has the meaning given such term in section 403(11) of title 41. See section 2302(7) of this title.

Subsec. (j)(3)(A). Pub. L. 102–25, §701(d)(2)(B), substituted ''the small purchase threshold'' for ''$25,000''.

1990—Subsec. (g). Pub. L. 101–510 substituted ''the small purchase threshold'' for ''$25,000'' in pars. (2) and (3) and added par. (5).

1989—Subsec. (b)(2). Pub. L. 101–189, §853(d), substituted ''The head of an agency'' for ''An executive agency'' and ''concerns other than'' for ''other than'' and inserted before period at end ''and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (f)(1)(B)(iii). Pub. L. 101–189, §818(a)(1), (3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (f)(1)(B)(iv). Pub. L. 101–189, §818(a)(2), (c)(1), redesignated cl. (iii) as (iv) and substituted ''$50,000,000'' for ''$10,000,000'' and ''paragraph (6)(C)'' for ''paragraph (6)(B)''.

Subsec. (f)(2)(E). Pub. L. 101–189, §817(a), added subpar. (E).

Subsec. (f)(4). Pub. L. 101–189, §817(b), inserted '', and any document prepared pursuant to paragraph (2)(E),'' after ''any related information''.

Subsec. (f)(6)(B). Pub. L. 101–189, §818(b)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (f)(6)(C). Pub. L. 101–189, §818(b)(1), (c)(2), redesignated subpar. (B) as (C) and substituted ''paragraph (1)(B)(iv)'' for ''paragraph (1)(B)(iii)''.

Subsec. (j). Pub. L. 101–189, §812, added subsec. (j).

1988—Subsec. (f)(1)(B)(ii). Pub. L. 100–456, §803(1), substituted ''(or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A));'' for ''or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule);''.

Subsec. (f)(1)(B)(iii). Pub. L. 100–456, §803(2), inserted ''or in the case of the Under Secretary of Defense for Acquisition, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B)'' before semicolon at end.

Subsec. (f)(6). Pub. L. 100–456, §803(3), added par. (6).

1987—Subsec. (a)(1)(A). Pub. L. 100–26, §7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Competition in Contracting Act of 1984''.

Subsec. (f)(1)(C). Pub. L. 100–26, §7(d)(3)(B), inserted ''(41 U.S.C. 416)'' after ''Policy Act''.

Subsec. (g)(1). Pub. L. 100–26, §7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Act of 1984''.

1986—Subsec. (b)(2). Pub. L. 99–661, §1343(a)(14), substituted ''15 U.S.C. 638,'' for ''15 U.S.C. 639;''.

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(a)], Pub. L. 99–661, §923(a), amended par. (1) identically, inserting ''or only from a limited number of responsible sources''.

Subsec. (d)(1)(A). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(b)], Pub. L. 99–661, §923(b), amended subpar. (A) identically, substituting ''a concept—'' for ''a unique and innovative concept'', adding cl. (i), and designating provision relating to nonavailability to the United States and nonresemblance to a pending competitive procurement as cl. (ii).

Subsec. (d)(1)(B). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(c)], Pub. L. 99–661, §923(c), amended subpar. (B) identically, inserting '', or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''highly specialized equipment'', inserted a one-em dash after ''would result in'', paragraphed cls. (i) and (ii), in cl. (i) substituted ''competition;'' for ''competition,'', and in cl. (ii) struck out '', such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''agency's needs''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§927(a)], Pub. L. 99–661, §927(a), amended section identically, adding subsec. (i).

1985—Subsec. (a)(1)(B). Pub. L. 99–145, §1303(a)(13), substituted ''procedures'' for ''krocedures''.

Subsec. (f)(2). Pub. L. 99–145, §961(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

''(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

''(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637).''

1984—Pub. L. 98–369, §2723(a), substituted ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in section

catchline and struck out subsecs. (a) to (e) and (g) to (i), redesignated subsec. (f) as (h), and added new subsecs. (a) through (g), thereby removing the prior statutory preference for formal advertising and installing instead more competitive procurement procedures, including dual sourcing, but with provision for the use of other than competitive procedures in specified situations.

Subsec. (b)(2). Pub. L. 98–577, § 504(b)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only small business concerns to compete.

Subsec. (b)(3). Pub. L. 98–577, § 504(b)(1), added par. (3).

Subsec. (f)(2). Pub. L. 98–577, § 504(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 98–369, § 2727(b), substituted ''contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed bid procedures'' for ''contracts negotiated under this section shall be treated as if they were made with formal advertising''.

Pub. L. 98–369, § 2723(a)(1)(B), redesignated subsec. (f) as (h).

1982—Subsec. (a). Pub. L. 97–295, § 1(24)(A), inserted '', and shall be awarded on a competitive bid basis to the lowest responsible bidder,'' after ''formal advertising''.

Subsec. (e). Pub. L. 97–375 repealed subsec. (e) which directed that a report be made on May and November 19 of each year of purchases and contracts under cls. (11) and (16) of subsec. (a) since the last report, and that the report name each contractor, state the amount of each contract, and describe, with consideration of the national security, the property and services covered by each contract.

Subsec. (f)(1). Pub. L. 97–295, § 1(24)(B), substituted ''Healey'' for ''Healy'' after ''Walsh–''.

Subsec. (i). Pub. L. 97–295, § 1(24)(C), added subsec. (i).

1981—Subsecs. (a)(3), (g). Pub. L. 97–86 substituted ''$25,000'' for ''$10,000''.

1980—Subsec. (f). Pub. L. 96–513 substituted ''(1) The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healy Act') (41 U.S.C. 35–45).'', for ''(1) Sections 35–45 of title 41.'', and ''(2) The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5).'' for ''(2) Sections 276a—276a–5 of title 40.'', and struck out ''(3) Sections 324 and 325a of title 40''.

1974—Subsec. (a)(3). Pub. L. 93–356, § 4(a), substituted ''$10,000'' for ''$2,500''.

Subsec. (g). Pub. L. 93–356, § 4(b), substituted ''$10,000'' for ''$2,500''.

1968—Subsec. (g). Pub. L. 90–500 required that the proposals solicited from the maximum number of qualified sources, consistent with the nature and requirements of the supplies or services to be procured, include price.

Subsec. (h). Pub. L. 90–268 added subsec. (h).

1962—Subsec. (a). Pub. L. 87–653, § 1(a), (b), provided that formal advertising be used where feasible and practicable under existing conditions and circumstances, subjected the agency head to the requirements of section 2310 of this title before negotiating a contract where formal advertising is not feasible and practicable and, in par. (14), substituted ''would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;'' for ''and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or''.

Subsec. (g). Pub. L. 87–653, § 1(c), added subsec. (g).

1958—Subsec. (a). Pub. L. 85–861 included Commonwealths in cl. (6).

Pub. L. 85–800 substituted ''$2,500'' for ''$1,000'' in cl. (3) and inserted ''or nonperishable'' in cl. (9).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 923(d)] of Pub. L. 99–500 and Pub. L. 99–591, and section 923(d) of title IX, formerly title IV of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to contracts for which solicitations are issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) The amendment made by subsection (b) [amending this section] shall apply with respect to contracts awarded on the basis of unsolicited research proposals after the end of the 180-day period beginning on the date of the enactment of this Act.

''(3) The amendments made by subsection (c) [amending this section] shall apply with respect to follow-on contracts awarded after the end of the 180-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 961(e) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) [amending this section and section 253 of Title 41, Public Contracts], (b) [amending section 2323 (now section 2343) of this title], and (c) [amending section 759 of Title 40, Public Buildings, Property, and Works] shall take effect as if included in the enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369) [see Effective Date of 1985 Amendment note set out under section 251 of Title 41].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(h) of Pub. L. 87–653 provided that: ''The amendments made by this Act [amending this section and sections 2306, 2310, and 2311 of this title] shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act [Sept. 10, 1962].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Repeal of prior subsec. (j) of this section by section 1004(b) of Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under section 759 of Title 40, Public Buildings, Property, and Works, or subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AUTHORITY OF BASE COMMANDERS OVER CONTRACTING FOR COMMERCIAL ACTIVITIES

Pub. L. 100–180, div. A, title XI, § 1111, Dec. 4, 1987, 101 Stat. 1146, provided that:

''(a) AUTHORITY.—The Secretary of Defense shall direct that the commander of each military installation (under regulations prescribed by the Secretary of Defense and subject to the authority, direction, and control of the Secretary) shall have the authority and the responsibility to carry out the following:

''(1) Prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation.

''(2) Decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy).

''(3) Conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the Circular A–76 process.

''(4) To the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

''(b) DEADLINE FOR REGULATIONS.—The Secretary shall prescribe the regulations required by subsection (a) no later than 60 days after the date of the enactment of this Act [Dec. 4, 1987].

''(c) DEFINITION.—In this section, the term 'military installation' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

''(d) TERMINATION OF AUTHORITY.—The authority provided for commanders of military installations by subsection (a) shall terminate on October 1, 1989.''

CONSTRUCTION OF 1984 AMENDMENT

Section 2723(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 2305 of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).''

EVALUATION OF CONTRACTS FOR PROFESSIONAL AND TECHNICAL SERVICES

Section 804 of Pub. L. 100–456, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Secretary of Defense, within 120 days after Sept. 29, 1988, to establish criteria to ensure that proposals for contracts for professional and technical services be evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees and, within 30 days after Sept. 29, 1988, to establish an advisory committee to make recommendations on the criteria.

REGULATIONS ON USE OF FIXED-PRICE DEVELOPMENT CONTRACTS

Section 807 of Pub. L. 100–456, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(a) IN GENERAL.—(1) Not later than 120 days after the date of the enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall revise the Department of Defense regulations that provide for the use of fixed-price type contracts in a development program. The regulations shall provide that a fixed-price contract may be awarded in such a program only if—

''(A) the level of program risk permits realistic pricing; and

''(B) the use of a fixed-price contract permits an equitable and sensible allocation of program risk between the United States and the contractor.

''(2)(A) The regulations also shall provide that if a contract for development of a major system is to be awarded in an amount greater than $10,000,000, the contract may not be a firm fixed-price contract.

''(B) A waiver of the requirement prescribed in regulations under subparagraph (A) may be granted by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, but only if the Secretary determines and states in writing that the award is consistent with the criteria specified in clauses (A) and (B) of paragraph (1) and the regulations prescribed under such paragraph. The Secretary may delegate the authority in the preceding sentence only to a person who holds a position in the Office of the Secretary of Defense at or above the level of Assistant Secretary of Defense.

''(b) DEFINITIONS.—In this section, the term 'major system' has the meaning given such term by section 2302(5) of such title.

''(c) EXPIRATION.—Paragraph (2) of subsection (a) shall cease to be effective two years after the date of the enactment of this Act [Sept. 29, 1988].''

PROHIBITION OF PURCHASE OF ANGOLAN PETROLEUM PRODUCTS FROM COMPANIES PRODUCING OIL IN ANGOLA

Section 842 of Pub. L. 102–484 provided that: ''The prohibition in section 316 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (100 Stat. 3855; 10 U.S.C. 2304 note) shall cease to be effective on the date on which the President certifies to Congress that free, fair, and democratic elections have taken place in Angola.''

Section 316 of Pub. L. 99–661 provided that:

''(a) GENERAL RULE.—The Secretary of Defense may not enter into a contract with a company for the purchase of petroleum products which originated in Angola if the company (or a subsidiary or partnership of the company) is engaged in the production of petroleum products in Angola.

''(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) if the Secretary determines that such action is in the best interest of the United States.

''(c) PETROLEUM PRODUCT DEFINED.—For purposes of this section, the term 'petroleum product' means—

''(1) natural or synthetic crude;

''(2) blends of natural or synthetic crude; and

''(3) products refined or derived from natural or synthetic crude or from such blends.

''(d) EFFECTIVE DATE.—This section shall take effect six months after the date of the enactment of this Act [Nov. 14, 1986].''

DEADLINE FOR PRESCRIBING REGULATIONS

Section 101(c) [title X, § 927(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 927(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Secretary of Defense shall prescribe the regulations required by section 2304(i) of such title (as added by subsection (a)) not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].''

ONE-YEAR SECURITY-GUARD PROHIBITION

Section 1222(b) of Pub. L. 99–661 provided that:

''(1) Except as provided in paragraph (2), funds appropriated to the Department of Defense may not be obligated or expended before October 1, 1987, for the purpose of entering into a contract for the performance of

security-guard functions at any military installation or facility.

''(2) The prohibition in paragraph (1) does not apply—

''(A) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which military personnel would have to be used for the performance of the function described in paragraph (1) at the expense of unit readiness;

''(B) to a contract to be carried out on a Government-owned but privately operated installation;

''(C) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983; or

''(D) to a contract for the performance of security-guard functions if (i) the requirement for the functions arises after the date of the enactment of this Act [Nov. 14, 1986], and (ii) the Secretary of Defense determines the functions can be performed by contractor personnel without adversely affecting installation security, safety, or readiness.''

CONTRACTING OUT PERFORMANCE OF DEPARTMENT OF DEFENSE SUPPLY AND SERVICE FUNCTIONS

Section 1223 of Pub. L. 99–661, which required Secretary to contract for Department of Defense supplies and services from private sector after a cost comparison demonstrates lower cost than Department of Defense can provide, and to ensure that overhead costs considered are realistic and fair, was repealed and restated in section 2462 of this title by Pub. L. 100–370, § 2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

REPORTS ON SAVINGS OR COSTS FROM INCREASED USE OF CIVILIAN PERSONNEL

Section 1224 of Pub. L. 99–661, which required Secretary to maintain cost comparison data on performance of a commercial or industrial type activity taken over by Department of Defense comparing performance by employees of private contractor to that of civilian employees of Department of Defense, and to submit semi-annual report on savings or loss to United States, was repealed and restated in section 2463 of this title by Pub. L. 100–370, § 2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

Determination of President of the United States, No. 93–32, July 19, 1993, 58 F.R. 40309, provided:

Pursuant to the authority vested in me by Public Law 102–484, section 842 [set out as a note above], I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

WILLIAM J. CLINTON.

LIMITATIONS ON CONTRACTING PERFORMED BY COAST GUARD

Pub. L. 101–225, title II, § 205, Dec. 12, 1989, 103 Stat. 1912, provided that: ''Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

''(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A–76 with respect to that procurement;

''(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

''(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.''

Pub. L. 100–448, § 5, Sept. 28, 1988, 102 Stat. 1837, provided that:

''(a) MAINTENANCE OF LOGISTICS CAPABILITY.—

''(1) STATEMENT OF NATIONAL INTEREST.—It is in the national interest for the Coast Guard to maintain a logistics capability (including personnel, equipment, and facilities) to provide a ready and controlled source of technical competence and resources necessary to ensure the effective and timely performance of Coast Guard missions in behalf of the security, safety, and economic and environmental well-being of the United States.

''(2) SUBMISSION OF LIST OF NECESSARY ACTIVITIES; LIMITATION ON CONTRACTING.—(A) Not later than January 31 of each year, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a list of Coast Guard activities that are necessary for maintaining the logistics capability described in paragraph (1). If the Secretary does not submit such list by that date, no activity performed by Coast Guard personnel may be contracted for performance by non-Government personnel after that date until the list is submitted to such committees.

''(B) The list submitted by the Secretary under this section shall not include—

''(i) any activity that is being performed under contract by non-Government personnel on the date of enactment of this Act [Sept. 28, 1988]; or

''(ii) any activity for which the Congress received, prior to the date of the enactment of this Act, a written notification of intent to contract pursuant to section 14(b)(2) of Public Law 98–557 (98 Stat. 2864).

''(b) PROHIBITION ON CONTRACTING FOR PERFORMANCE OF LISTED ACTIVITIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), performance by non-Government personnel of an activity included in a list under subsection (a)(2)(A) may not be contracted for after the date on which the list is submitted by the Secretary in accordance with subsection (a)(2).

''(2) WAIVER OF PROHIBITION.—The Secretary may waive paragraph (1) with respect to any activity if the Secretary determines that the performance of that activity by Government personnel is no longer necessary to ensure the effective and timely performance of Coast Guard missions.

''(3) EFFECTIVE DATE OF WAIVER; SUBMISSION OF STATEMENT.—A waiver under paragraph (2) shall not take effect until after a period of 30 days in which either the Senate or House of Representatives is in session after the Secretary submits to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a complete written statement concerning the waiver and the reasons therefor.

''(c) SUBMISISON [sic] OF LIST OF ACTIVITIES CONTRACTED FOR PERFORMANCE.—At least 30 days before the beginning of each fiscal year, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a list of activities that will be contracted for performance by non-Government personnel under the procedures of Office of Management and Budget Circular A–76 during that fiscal year.

''(d) EMPLOYMENT OF LOCAL RESIDENTS TO PERFORM CONTRACTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each contract awarded by the Coast Guard in fiscal years 1988 and 1989 for construction or services to be performed in whole or in part in a State which has an unemployment rate in excess of

the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of the department in which the Coast Guard is operating may waive this subsection in the interest of national security or economic efficiency.

''(2) LOCAL RESIDENT DEFINED.—As used in this subsection, the term 'local resident' means a resident of a State described in paragraph (1), and any individual who commutes daily to a State described in paragraph (1).''

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–640, §5, Nov. 10, 1986, 100 Stat. 3546.

CONTRACTED ADVISORY AND ASSISTANCE SERVICES

Section 918 of Pub. L. 99–145, which provided that Secretary of Defense require each military department to establish accounting procedure to aid in control of expenditures for contracted advisory and assistance services, prescribe regulations to identify such services and which services are in direct support of a weapons system, consider specific list of factors in prescribing regulations, and identify total amount requested and separate category amount requested in budget documents for Department of Defense presented to Congress, was repealed and restated in section 2212 of this title by Pub. L. 100–370, §1(d)(2), July 19, 1988, 102 Stat. 842.

ASSIGNMENT OF PRINCIPAL CONTRACTING OFFICERS

Section 925 of Pub. L. 99–145 required Secretary of Defense to develop a policy regarding mobility and regular rotation of principal administrative and corporate administrative contracting officers in Department of Defense and to report to Committees on Armed Services of Senate and House of Representatives not later than January 1, 1986, on such policy, prior to repeal by Pub. L. 101–510, div. A, title XII, §1207(a), Nov. 5, 1990, 104 Stat. 1665.

PROHIBITION ON FELONS CONVICTED OF DEFENSE-CONTRACT-RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS

Pub. L. 99–145, title IX, §932, Nov. 8, 1985, 99 Stat. 699, prohibited certain felons from working on defense contracts and penalized employment of such persons by defense contractors, prior to repeal by Pub. L. 99–500, §101(c) [title X, §941(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, §101(c) [title X, §941(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, §941(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.

REIMBURSEMENT, INTEREST CHARGES, AND PENALTIES FOR OVERPAYMENTS DUE TO COST AND PRICING DATA

Pub. L. 99–145, title IX, §934(a), Nov. 8, 1985, 99 Stat. 700, which provided for interest payments and penalties for overpayments due to faulty cost and pricing data, was repealed by Pub. L. 99–500, §101(c) [title X, §952(b)(2), (d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §952(b)(2), (d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(b)(2), (d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, effective with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on Oct. 18, 1986.

PERSONNEL FOR PERFORMANCE OF SERVICES AND ACTIVITIES

Pub. L. 99–145, title XII, §1233, Nov. 8, 1985, 99 Stat. 734, related to services and activities to be performed by non-Government personnel, prior to repeal by Pub. L. 99–661, div. A, title XII, §1222(c), Nov. 14, 1986, 100 Stat. 3977.

LIMITATION ON CONTRACTING-OUT CORE LOGISTICS FUNCTIONS

Section 1231(a)–(e) of Pub. L. 99–145 declared that certain specifically described functions of the Department of Defense shall be deemed logistics activities necessary to maintain the logistics capability described in section 307(a)(1) of Pub. L. 98–525, formerly set out below; contained a description of the functions, i.e., depot-level maintenance of mission-essential materiel at specifically located activities of the Army, the Navy, the Marine Corps, the Air Force, the Defense Logistics Agency, and the Defense Mapping Agency; included certain matters within the specified functions and excluded certain functions; and defined ''mission-essential materiel'' as related to such functions.

Section 307 of Pub. L. 98–525, as amended by Pub. L. 99–145, title XII, §1231(f), Nov. 8, 1985, 99 Stat. 733, which prohibited contracting to non-Government personnel of logistics activities necessary for effective response to national emergencies unless Secretary waives such prohibition after a determination that Government performance of such activity is no longer required for national defense reasons, and reports to Congress on waiver, was repealed and restated in section 2464 of this title by Pub. L. 100–370, §2(a)(1), (c)(2), July 19, 1988, 102 Stat. 853, 854.

SHIPBUILDING CLAIMS FOR CONTRACT PRICE ADJUSTMENTS

Pub. L. 98–473, title I, §101(h)[title VIII, §8078], Oct. 12, 1984, 98 Stat. 1904, 1938, prohibited expenditure of funds to adjust any contract price in any shipbuilding claim, request for equitable adjustment, or demand for payment incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after Oct. 12, 1984, arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand, prior to repeal by Pub. L. 100–370, §1(p)(2), July 19, 1988, 102 Stat. 851. See section 2405 of this title.

Pub. L. 98–212, title VII, §787, Dec. 8, 1983, 97 Stat. 1453, which contained similar provisions relating to shipbuilding claims for contract price adjustments, was repealed and restated in section 2405 of this title by Pub. L. 98–525, title XII, §1234(a), (b)(2), Oct. 19, 1984, 98 Stat. 2604, effective Oct. 19, 1984.

WEAPON SYSTEM GUARANTEES; GOVERNMENT-AS-SOURCE EXCEPTION; WAIVER

Pub. L. 98–212, title VII, §794, Dec. 8, 1983, 97 Stat. 1454, provided for weapon system guarantees, Government-as-Source exception, and waiver, prior to repeal by Pub. L. 98–525, title XII, §1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, effective Jan. 1, 1985. See section 2403 of this title.

FIGHTER AIRCRAFT ENGINE WARRANTY

Pub. L. 97–377, title I, §101(c)[title VII, §797], Dec. 21, 1982, 96 Stat. 1865, provided that: ''None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to achieve the required performance at no cost to the Government.''

INSURANCE TO PROTECT GOVERNMENT CONTRACTORS AGAINST COST OF CORRECTING CONTRACTOR'S OWN DEFECTS; REIMBURSEMENT PROHIBITED

Pub. L. 97–12, title I, §100, June 5, 1981, 95 Stat. 29, and Pub. L. 97–114, title VII, §770, Dec. 29, 1981, 95 Stat. 1590, which provided that no funds authorized for the De-

partment of Defense in fiscal year 1981 and thereafter would be available to reimburse a contractor for the cost of commercial insurance, except for that normally maintained in the conduct of his business, that would protect against the cost for correction for the contractor's own defects in materials or workmanship such as were not a fortuitous casualty or loss, were repealed and restated in section 2399 of this title by Pub. L. 97–295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

RESTRICTIONS ON CONVERSION OF PERFORMANCE OF COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS FROM DEPARTMENT OF DEFENSE PERSONNEL TO PRIVATE CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 96–342, title V, §502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, §1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, §1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, §1221, Nov. 14, 1986, 100 Stat. 3976, which provided that no commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees could be converted to performance by a private contractor to circumvent any civilian personnel ceiling unless Secretary of Defense submitted favorable cost comparisons and certifications, and reported annually to Congress with regard to such conversions, was repealed and restated in section 2461 of this title by Pub. L. 100–370, §2(a)(1), (c)(1), July 19, 1988, 102 Stat. 851, 854.

Similar provisions for fiscal year 1980 were contained in Pub. L. 96–107, title VIII, §806, Nov. 9, 1979, 93 Stat. 813.

CONTRACT CLAIMS; REQUEST FOR EQUITABLE ADJUSTMENT; REQUEST FOR RELIEF; CERTIFICATION

Pub. L. 95–485, title VIII, §813, Oct. 20, 1978, 92 Stat. 1624, which prohibited payment of a contract claim, request for equitable adjustment, or request for relief which exceeded $100,000 unless a senior company official certified that request was made in good faith and that supporting data was accurate and complete, was repealed and restated in section 2410 of this title by Pub. L. 100–370, §1(h)(2), (p)(4), July 19, 1988, 102 Stat. 847, 851.

REPORT TO CONGRESS BY SECRETARY OF DEFENSE; CHANGES IN POLICY OR REGULATIONS CONCERNING USE OF PRIVATE CONTRACTORS FOR COMMERCIAL OR INDUSTRIAL TYPE FUNCTION AT DEPARTMENT OF DEFENSE INSTALLATIONS; RESTRICTIONS

Pub. L. 95–485, title VIII, §814, Oct. 20, 1978, 92 Stat. 1625, directed the Secretary of Defense to report to the House and Senate Committees on Armed Services any proposed change in policy or regulations from those in effect before June 30, 1976, as to whether commercial or industrial functions at Defense Department installations in the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period Oct. 1, 1978 to Sept. 30, 1979; prohibited such functions to be performed privately unless such contractor performance began before Oct. 20, 1978 or performance would have been allowed by policy and regulations in effect before June 30, 1976; and provided that such prohibition would apply until the end of the 60 day period beginning on the date the report by the Secretary of Defense is received by the House and Senate Committees.

REPORTING REQUIREMENTS FOR SECRETARY OF DEFENSE AND PRIME CONTRACTORS CONCERNING PAYMENTS BY PRIME CONTRACTORS FOR WORK PERFORMED BY SUBCONTRACTORS

Pub. L. 95–111, title VIII, §836, Sept. 21, 1977, 91 Stat. 906, which directed the Secretary of Defense to require all prime contractors with more than $500,000 of defense contract awards to report in dollars at the end of each year the amount of work done in that year and the State where performed, and requiring the Secretary of Defense to report annually to Congress the amount of funds spent for such work in each State, was repealed and restated in subsec. (i) of this section by Pub. L. 97–295, §§1(24)(C), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1315.

PERFORMANCE REVIEW OF DEPARTMENT OF DEFENSE COMMERCIAL OR INDUSTRIAL FUNCTIONS

Pub. L. 95–79, title VIII, §809, July 30, 1977, 91 Stat. 334, directed the Secretary of Defense and the Director of the Office of Management and Budget to review criteria used in determining whether commercial or industrial type functions at Department of Defense installations within the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors and to report to the House and Senate Armed Services Committees before Jan. 1, 1978, the results of the review; prohibited commercial or industrial type functions being performed on July 30, 1977 by Department of Defense personnel from being converted to performance by private contractors before the earlier of Mar. 15, 1978 or the end of the 90-day period beginning on the date the report is received by the House and Senate Committees; exempted from such prohibition the conversion to performance by private contractors of industrial or commercial type functions if the conversion would have been made under policies and regulations in effect before June 30, 1976; and required the Secretary of Defense to report to the House and Senate Committees on Armed Services before Jan. 1, 1978, detailing the Department's rationale for establishing goals for the percentage of work at defense research installations to be performed by private contractors and for any direction in effect on July 30, 1977 establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors or directing a change in any such allocation in effect on July 30, 1977.

DISCRIMINATION IN PETROLEUM SUPPLIES TO ARMED FORCES PROHIBITED; ENFORCEMENT PROCEDURE; PENALTIES; EXPIRATION

Pub. L. 94–106, title VIII, §816, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 98–620, title IV, §402(8), Nov. 8, 1984, 98 Stat. 3357, provided a remedy for discrimination by citizens of nationals of the United States or corporations organized or operating within the United States, and by organizations controlled by them, against the Department of Defense in the supply of petroleum products for two years after Oct. 7, 1975.

ANNOUNCEMENTS OF AWARD OF CONTRACTS BY DEPARTMENT OF DEFENSE; DISCLOSURE OF IDENTITY OF CONTRACTOR PRIOR TO ANNOUNCEMENT PROHIBITED

Pub. L. 91–441, title V, §507, Oct. 7, 1970, 84 Stat. 913, which had provided that the identity or location of a recipient of a contract from the Department of Defense may not be revealed prior to the public announcement of such identity by the Secretary of Defense, was repealed and restated in section 2316 of this title by Pub. L. 97–295, §§1(26)(A), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1314.

AWARD OF CONTRACTS THROUGH FORMAL ADVERTISING AND COMPETITIVE BIDDING WHERE PRACTICABLE

Pub. L. 90–5, title III, §304, Mar. 16, 1967, 81 Stat. 6, which had provided that the Secretary of Defense was directed, insofar as practicable, that all contracts be formally advertised and awarded on a competitive bid basis to the lowest responsible bidder, was repealed and restated in subsec. (a) of this section by Pub. L. 97–295, §§1(24)(A), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1314.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

Provisions of the National Emergencies Act not applicable to the powers and authorities conferred by subsec. (a)(1) of this section and actions taken hereunder, see section 1651(a)(7) of Title 50, War and National Defense.

CROSS REFERENCES

Delegation of powers, see section 2311 of this title.

Determinations or decisions based on written findings, see section 2310 of this title.

National defense contract provisions as not authorizing increase in price of subsec. (a)(15) contracts to amount higher than lowest rejected bid of responsible bidder, see section 1432 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1091, 1724, 2304a, 2304b, 2304c, 2343, 2350b, 2361, 2662 of this title; title 15 section 637; title 41 sections 416, 417, 423; title 42 section 2465e; title 50 sections 403c, 1432, 1651; title 50 App. section 2077.

§ 2304a.[1] Task and delivery order contracts: general authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 2304d of this title) for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—(1) The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3) The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Section 1004(d) of Pub. L. 103–355 provided that: ''Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c) [amending sections 2304 and 2331 of this title], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

''(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)); and

''(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304b, 2304c, 2304d of this title.

§ 2304b. Task order contracts: advisory and assistance services

(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

[1] Another section 2304a is set out after section 2304d of this title.

(c) CONTENT OF NOTICE.—The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b)[1] of this title.

(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(e) MULTIPLE AWARDS.—(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(h) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term ''advisory and assistance services'' has the meaning given such term in section 1105(g) of title 31.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3251.)

REFERENCES IN TEXT

Section 2304a of this title, referred to in subsec. (d)(1), probably means the section 2304a added by section 1004(a)(1) of Pub. L. 103–355.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under section 759 of Title 40, Public Buildings, Property, and Works, or subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304a, 2304c, 2304d of this title.

§ 2304c. Task and delivery order contracts: orders

(a) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

(b) MULTIPLE AWARD CONTRACTS.—When multiple task or delivery order contracts are award-

[1] See References in Text note below.

ed under section 2304a(d)(1)(B)[1] or 2304b(e) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

(c) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(d) PROTESTS.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

(e) TASK AND DELIVERY ORDER OMBUDSMAN.—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 2304a(d)(1)(B)[1] or 2304b(e) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

(f) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 2304a[1] and 2304b of this title.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3252.)

REFERENCES IN TEXT

Section 2304a of this title, referred to in subsecs. (b), (e), and (f), probably means the section 2304a added by section 1004(a)(1) of Pub. L. 103–355.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under section 759 of Title 40, Public Buildings, Property, and Works, or subchapter VI (§541 et seq.) of chapter 10 of Title 40, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304a, 2304b, 2304d of this title.

[1] See References in Text note below.

§2304d. Task and delivery order contracts: definitions

In sections 2304a,[1] 2304b, and 2304c of this title:

(1) The term ''task order contract'' means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

(2) The term ''delivery order contract'' means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3253.)

REFERENCES IN TEXT

Section 2304a of this title, referred to in text, probably means the section 2304a added by section 1004(a)(1) of Pub. L. 103–355.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under section 759 of Title 40, Public Buildings, Property, and Works, or subchapter VI (§541 et seq.) of chapter 10 of Title 40, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304a, 2304b of this title.

§2304a.[1] Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive procedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than—

[1] See References in Text note below.

[1] Another section 2304a is set out after section 2304 of this title.

(1) small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644); or

(2) entities described in subsection (a)(1) of section 2323 of this title in furtherance of the goal specified in that subsection.

(Added Pub. L. 103–160, div. A, title VIII, § 848(a)(1), Nov. 30, 1993, 107 Stat. 1724.)

EFFECTIVE DATE

Section 848(b) of Pub. L. 103–160 provided that: ''Section 2304a of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 30, 1993].''

§ 2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals—

(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(II) the time and place for submission of proposals.

(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(ii) shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(I) significantly more important than cost or price;

(II) approximately equal in importance to cost or price; or

(III) significantly less important than cost or price.

(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(4) Nothing in this subsection prohibits an agency from—

(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(B) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price.

(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals and make an award based solely on the factors specified in the solicitation.

(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids in accordance with paragraph (1) without discussions with the bidders and, except as provided in paragraph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(4)(A) The head of an agency shall evaluate competitive proposals in accordance with paragraph (1) and may award a contract—

(i) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(ii) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(B) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals.

(C) Subparagraph (B) does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.

(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(B) The debriefing shall include, at a minimum—

(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(iii) the overall ranking of all offers;

(iv) a summary of the rationale for the award;

(v) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(vi) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

(E) If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

(ii) the same information that would have been provided to the original offerors.

(F) The contracting officer shall include a summary of the debriefing in the contract file.

(6) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(c) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(d)(1)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer pro-

posals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are the following:

(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(2)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(ii) Proposals for the qualification or development of multiple sources of supply for the item.

(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(4)(A) Whenever the head of an agency requires that proposals described in paragraph (1)(B) or (2)(B) be submitted by an offeror in its offer, the offeror shall not be required to provide a proposal that enables the United States to acquire competitively in the future an identical item if the item was developed exclusively at private expense unless the head of the agency determines that—

(i) the original supplier of such item will be unable to satisfy program schedule or delivery requirements; or

(ii) proposals by the original supplier of such item to meet the mobilization requirements are insufficient to meet the agency's mobilization needs.

(B) In considering offers in response to a solicitation requiring proposals described in paragraph (1)(B) or (2)(B), the head of an agency shall base any evaluation of items developed exclusively at private expense on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(e) PROTEST FILE.—(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(3) Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called ''rule 4 file'') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).[1]

(f) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Sept. 2, 1958, Pub. L. 85–861, § 1(44), 72 Stat. 1457; Mar. 16, 1968, Pub. L. 90–268, § 3, 82 Stat. 49; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2723(b), 98 Stat. 1191; Oct. 19, 1984, Pub. L. 98–525, title XII, § 1213(a), 98 Stat. 2591; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(14), 99 Stat. 739; Oct. 18, 1986, Pub. L. 99–500, § 101(c) [title X, § 924(a), (b)], 100 Stat. 1783–82, 1783–153, and Oct. 30, 1986, Pub. L. 99–591, § 101(c) [title X, § 924(a), (b)], 100 Stat. 3341–82, 3341–153; Nov. 14, 1986, Pub. L. 99–661, div. A, title III, § 313(b), title IX, formerly title IV, § 924(a), (b), 100 Stat. 3853, 3932, 3933, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, § 3(5), 101 Stat. 273; Sept. 29, 1988, Pub. L. 100–456, div. A, title VIII, § 806, 102 Stat. 2010; Nov. 29, 1989, Pub. L. 101–189, div. A, title VIII, § 853(f), 103 Stat. 1519; Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 802(a)–(d), 104 Stat. 1588, 1589; Nov. 30, 1993,

[1] See References in Text note below.

Pub. L. 103–160, div. A, title XI, § 1182(a)(5), 107 Stat. 1771; Oct. 13, 1994, Pub. L. 103–355, title I, §§ 1011–1016, title IV, § 4401(b), 108 Stat. 3254–3257, 3347.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2305(a)	41:152 (less clause (b)).	Feb. 19, 1948, ch. 65,
2305(b)	41:152 (clause (b)).	§§ 2(d), 3, 62 Stat. 22.
2305(c)	41:151(d).	

In subsection (a), the word ''needed'' is substituted for the words ''necessary to meet the requirements''.

In subsection (b), the words ''United States'' are substituted for the word ''Government''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2305	41:152(c).	Aug. 9, 1955, ch. 628, § 15, 69 Stat. 551.

Reference to bids is omitted as surplusage (see opinion of the Judge Advocate General of the Army (JAGT 1956/9122, 21 Dec. 1956)). The word ''attachments'' is substituted for the words ''material required''. The words ''the specifications in'' are inserted in the second sentence for clarity. The word ''available'' is omitted as covered by the word ''accessible.'' The words ''no award may be made'' are substituted for the words ''and any award or awards made to any bidder in such case shall be invalidated and rejected''.

REFERENCES IN TEXT

Section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759), referred to in subsec. (e)(3), is classified to section 759 of Title 40, Public Buildings, Property, and Works.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–355, § 4401(b), substituted ''a purchase for an amount not greater than the simplified acquisition threshold)'' for ''small purchases)'' in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 103–355, § 1011(a)(1), substituted ''and significant subfactors'' for ''(and significant subfactors)'' and ''cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors'' for ''cost- or price-related factors, and noncost- or nonprice-related factors''.

Subsec. (a)(2)(A)(ii). Pub. L. 103–355, § 1011(a)(2), substituted ''and subfactors'' for ''(and subfactors)''.

Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–355, § 1011(a)(3), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), unless discussions are determined to be necessary; and''.

Subsec. (a)(3). Pub. L. 103–355, § 1011(b), added par. (3) and struck out former par. (3), which read as follows: ''In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror).''

Subsec. (a)(4). Pub. L. 103–355, § 1011(b), added par. (4).

Subsec. (a)(5). Pub. L. 103–355, § 1012, added par. (5).

Subsec. (b)(3). Pub. L. 103–355, § 1013(a), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and inserted at end ''Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.''

Subsec. (b)(4)(B). Pub. L. 103–355, § 1013(b), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and '', within three days after the date of contract award, shall notify, in writing or by electronic means,'' for ''shall promptly notify''.

Subsec. (b)(5), (6). Pub. L. 103–355, § 1014, added par. (5) and redesignated former par. (5) as (6).

Subsec. (e). Pub. L. 103–355, § 1015, added subsec. (e).

Subsec. (f). Pub. L. 103–355, § 1016, added subsec. (f).

1993—Subsec. (b)(4)(A). Pub. L. 103–160 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A)(i). Pub. L. 101–510, § 802(a)(1), inserted ''(and significant subfactors)'' after ''significant factors'' and substituted ''(including cost or price, cost- or price-related factors, and noncost- or nonprice-related factors)'' for ''(including cost or price)''.

Subsec. (a)(2)(A)(ii). Pub. L. 101–510, § 802(a)(2), inserted ''(and subfactors)'' after ''those factors''.

Subsec. (a)(2(B)(ii)(I). Pub. L. 101–510, § 802(b), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and''.

Subsec. (a)(3). Pub. L. 101–510, § 802(c), substituted ''the evaluation factors and subfactors, including the quality of the product or services'' for ''the quality of the services''.

Subsec. (b)(1). Pub. L. 101–510, § 802(d)(1), inserted ''and make an award'' after ''competitive proposals''.

Subsec. (b)(3). Pub. L. 101–510, § 802(d)(2), inserted ''in accordance with paragraph (1)'' after ''shall evaluate the bids''.

Subsec. (b)(4)(A). Pub. L. 101–510, § 802(d)(3)(A), substituted ''competitive proposals in accordance with paragraph (1)'' for ''competitive proposals'' in introductory provisions, added cls. (i) and (ii), and struck out former cls. (i) and (ii) which read as follows:

''(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

''(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.''

Subsec. (b)(4)(B) to (E). Pub. L. 101–510, § 802(d)(3)(B)–(D), redesignated subpars. (D) and (E) as (B) and (C), respectively, substituted ''Subparagraph (B)'' for ''Subparagraph (D)'' in subpar. (C), and struck out former subpars. (B) and (C) which read as follows:

''(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only cost or price and the other factors included in the solicitation.

''(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).''

1989—Subsec. (b)(4)(D). Pub. L. 101–189 inserted ''cost or'' after ''considering only''.

1988—Subsec. (d)(1)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are''.

Subsec. (d)(2)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are''.

Subsec. (d)(3). Pub. L. 100–456, § 806(a)(2), inserted provision that objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

Subsec. (d)(4). Pub. L. 100–456, § 806(a)(1), added par. (4).

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(a)], Pub. L. 99–661, § 924(a), amended subsec. (a) identically, in par. (2)(A)(i) striking out ''(including price)'' after ''factors'' and inserting ''(including price)'' and ''(including cost and price)'' and adding par. (3).

Subsec. (b)(4)(B). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(b)], Pub. L. 99–661, § 924(b), amended subpar. (B) identically, inserting ''cost or''.

Subsec. (b)(4)(E). Pub. L. 99–661, § 313(b), added subpar. (E).

1985—Subsec. (b)(5). Pub. L. 99–145 aligned the margin of par. (5).

1984—Subsecs. (c), (d). Pub. L. 98–525 added subsecs. (c) and (d).

Catchline, subsecs. (a) to (d). Pub. L. 98–369 substituted ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' and completely revised the text to substitute a program using solicitation requirements covering military procurement for former provisions which had used the approach of utilizing formal advertisements, struck out former provisions which had directed that, except in cases where the Secretary of Defense had determined that military requirements necessitated the specification of container size, no advertisement or invitation to bid for the carriage of government property in other than government-owned cargo containers could specify carriage of such property in cargo containers of any stated length, height, or width, and carried forward into new subsecs. (a)(1)(A)(iii), (B)(i), and (b)(2) and (5) the content of former section.

1968—Subsec. (a). Pub. L. 90–268 inserted provision that, except in cases where the Secretary of Defense determines that military requirements necessitate such specification, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1958—Subsecs. (b) to (d). Pub. L. 85–861 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 802(e) of Pub. L. 101–510 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].

''(2) The Secretary of Defense may require the amendments made by this section to apply with respect to solicitations issued before the end of the period referred to in paragraph (1). The Secretary of Defense shall publish in the Federal Register notice of any such earlier effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 924(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 924(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1213(b) of Pub. L. 98–525 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

CERTIFICATE OF COMPETENCY REQUIREMENTS

Pub. L. 102–484, div. A, title VIII, § 804, Oct. 23, 1992, 106 Stat. 2447, provided that, in case of contract to be entered into pursuant to this chapter, other than pursuant to simplified procedures under section 2304(g) of this title, solicitation was to contain notice of right of bidding small business concern, in case of determination by contracting officer that concern was nonresponsible, to request Small Business Administration to make determination of responsibility under section 637(b)(7) of Title 15, Commerce and Trade, that if contracting officer determined that concern was nonresponsible, such officer was to notify concern in writing, of such determination, that concern had right to request Small Business Administration to make determination, and that, if concern desired to request such determination, concern was to inform officer in writing, within 14 days after receipt of notice, of such desire, and that, after being so informed, officer was to transmit request to Administration, or, if note so informed, officer was to proceed with award of contract, and contained provisions relating to effective and termination dates and report to be submitted to Congress, prior to repeal by Pub. L. 103–355, title VII, § 7101(b), Oct. 13, 1994, 108 Stat. 3367.

CONSTRUCTION OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 as not superseding or affecting the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2723(c) of Pub. L. 98–369, set out as a note under section 2304 of this title.

CROSS REFERENCES

Regulations for bids for contracts, see section 2381 of this title.

Research and development contracts, negotiation without advertising, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2320 of this title; title 42 section 1594; title 50 section 403c.

[§ 2305a. Renumbered § 2438]

§ 2306. Kinds of contracts

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract awarded under this chapter after using procedures other than sealed-bid pro-

cedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration. This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

[(c) Repealed. Pub. L. 103–355, title I, § 1021, Oct. 13, 1994, 108 Stat. 3257.]

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e) Each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(1) a cost-plus-a-fixed-fee subcontract; or

(2) a fixed-price subcontract or purchase order involving more than the greater of (A) the simplified acquisition threshold, or (B) 5 percent of the estimated cost of the prime contract.

(f) So-called ''truth-in-negotiations'' provisions relating to cost or pricing data to be submitted by certain contractors and subcontractors are provided in section 2306a of this title.

(g)(1) The head of an agency may enter into contracts for periods of not more than five years for the following types of services (and items of supply related to such services) for which funds would otherwise be available for obligation only within the fiscal year for which appropriated—

(A) operation, maintenance, and support of facilities and installations;

(B) maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

(D) base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal);

whenever he finds that—

(i) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(ii) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(iii) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(2) In entering into such contracts, the head of the agency shall be guided by the following principles:

(A) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(B) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(C) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(3) In the event funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

(h) Multiyear contracting authority is provided in section 2306b of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Sept. 10, 1962, Pub. L. 87–653, § 1(d), (e), 76 Stat. 528; July 5, 1968, Pub. L. 90–378, § 1, 82 Stat. 289; Sept. 25, 1968, Pub. L. 90–512, 82 Stat. 863; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(77), 94 Stat. 2926; Dec. 1, 1981, Pub. L. 97–86, title IX, §§ 907(b), 909(b), 95 Stat. 1117, 1118; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2724, 98 Stat. 1192; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(15), 99 Stat. 739; Oct. 18, 1986, Pub. L. 99–500, § 101(c) [title X, § 952(b)(1), (c)(1)], 100 Stat. 1783–82, 1783–169, and Oct. 30, 1986, Pub. L. 99–591, § 101(c) [title X, § 952(b)(1), (c)(1)], 100 Stat. 3341–82, 3341–169; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(b)(1), (c)(1), 100 Stat. 3949, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, § 3(5), 101 Stat. 273; Nov. 29, 1989, Pub. L. 101–189, div. A, title VIII, § 805(a), 103 Stat. 1488; Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 808, 104 Stat. 1593; Apr. 6, 1991, Pub. L. 102–25, title VII, § 701(d)(3), 105 Stat. 114; Oct. 13, 1994, Pub. L. 103–355, title

I, §§ 1021, 1022(b), title IV, §§ 4102(b), 4401(c), title VIII, § 8105(a), 108 Stat. 3257, 3260, 3340, 3348, 3392.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2306(a)	41:153(a) (1st sentence). 41:153(b) (1st 14 words of 1st sentence).	Feb. 19, 1948, ch. 65, § 4 (less words after semicolon of last sentence of (b), and less (c)), 62 Stat. 23.
2306(b).	41:153(a) (less 1st sentence).	
2306(c)	41:153(b) (2d sentence).	
2306(d)	41:153(b) (1st sentence, less 1st 14 words).	
2306(e)	41:153(b) (less 1st and 2d sentences; and less words after semicolon of last sentence).	

In subsection (a), the words ''subject to subsections (b)–(e)'' are substituted for the words ''Except as provided in subsection (b) of this section''. The words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''under section 2304 of this title'' are substituted for the words ''pursuant to section 151(c) of this title''. The words ''full amount of such'' and ''violation'' are omitted as surplusage.

In subsection (c), the words ''under section 2304 of this title'' are inserted for clarity.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (h)(11) of this section were contained in Pub. L. 100–456, title I, § 104(a), Oct. 24, 1988, 102 Stat. 2624, which was set out below, prior to repeal by Pub. L. 101–189, § 805(b).

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–355, §§ 4102(b), 8105(a), inserted at end ''This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.''

Subsec. (c). Pub. L. 103–355, § 1021, struck out subsec. (c) which read as follows: ''No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under this chapter unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.''

Subsec. (e)(2)(A). Pub. L. 103–355, § 4401(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Subsec. (h). Pub. L. 103–355, § 1022(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to requirements for multiyear contracts for purchase of property, including weapon systems and items and services associated with weapons systems.

1991—Subsec. (e)(2)(A). Pub. L. 102–25 substituted ''the small purchase threshold'' for ''the small purchase amount under section 2304(g) of this title''.

1990—Subsec. (h)(1). Pub. L. 101–510, § 808(a), struck out ''(other than contracts described in paragraph (6))'' after ''multiyear contracts'' in introductory provisions and substituted ''substantial savings of the total anticipated costs of carrying out the program through annual contracts'' for ''reduced total costs under the contract'' in subpar. (A).

Subsec. (h)(6). Pub. L. 101–510, § 808(b), struck out ''contracts for the construction, alteration, or major repair of improvements to real property or'' after ''not apply to''.

Subsec. (h)(9). Pub. L. 101–510, § 808(c)(1), inserted ''for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority'' after ''under this subsection'' in introductory provisions.

Subsec. (h)(9)(C). Pub. L. 101–510, § 808(c)(2), struck out subpar. (C) which read as follows: ''The proposed multiyear contract—

''(i) achieves a 10 percent savings as compared to the cost of current negotiated contracts, adjusted for changes in quantity and for inflation; or

''(ii) achieves a 10 percent savings as compared to annual contracts if no recent contract experience exists.''

1989—Subsec. (h)(9) to (11). Pub. L. 101–189 added pars. (9) to (11).

1986—Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 952(c)(1)], Pub. L. 99–661, § 952(c)(1), amended section identically, striking out '': cost or pricing data: truth in negotiation'' after ''contracts'' in section catchline.

Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 952(b)(1)], Pub. L. 99–661, § 952(b)(1), amended generally subsec. (f) identically, substituting provision that ''truth-in-negotiations'' provisions relating to cost and pricing data for contractors and subcontractors are provided in section 2306a of this title for provision relating to certification by contractors and subcontractors on cost and pricing data, circumstances under which such certification will be required, circumstances under which such certification, although not required, may be requested, and evaluation of the accuracy of the data submitted.

1985—Subsec. (a). Pub. L. 99–145, § 1303(a)(15)(A), inserted a period at end.

Subsec. (b). Pub. L. 99–145, § 1303(a)(15)(B), struck out ''of this title'' before ''shall contain''.

1984—Pub. L. 98–369, § 2724(f), substituted ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 2724(a), substituted ''the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into'' for ''this limitation and subject to subsections (b)–(f), the head of any agency may, in negotiating contracts under section 2304 of this title, make''.

Subsec. (b). Pub. L. 98–369, § 2724(b), substituted ''awarded under this chapter after using procedures other than sealed-bid procedures'' for ''negotiated under section 2304''.

Subsec. (c). Pub. L. 98–369, § 2724(c), substituted ''this chapter'' for ''section 2304 of this title,''.

Subsec. (e)(2). Pub. L. 98–369, § 2724(d), substituted ''the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)'' for ''$25,000 or''.

Subsec. (f)(1). Pub. L. 98–369, § 2724(e)(A)(i), (ii), substituted ''such contractor's or subcontractor's'' for ''his'' and struck out ''he'' before ''submitted was accurate'' in provisions preceding subpar. (A).

Subsec. (f)(1)(A). Pub. L. 98–369, § 2724(3)(A)(iii), (vi), (vii), substituted ''prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if'' for ''negotiated prime contract under this title where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(B). Pub. L. 98–369, § 2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(C). Pub. L. 98–369, § 2724(e)(A)(v)–(vii), substituted ''when'' for ''where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(D). Pub. L. 98–369, § 2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(2). Pub. L. 98–369, § 2724(e)(B), (D), (E), struck out ''negotiated'' before ''price as is practicable'' and before ''is based on adequate price competition'', redesignated as par. (3) the proviso formerly set out in this par., and as part of the redesignation substituted a period for '': *Provided*, That'' after ''or noncurrent''.

Subsec. (f)(3). Pub. L. 98–369, § 2724(e)(E), designated as par. (3) the proviso formerly set out in par. (2). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 98–369, §2724(e)(F), added par. (4).

Subsec. (f)(5). Pub. L. 98–369, §2724(e)(C), redesignated former par. (3) as (5) and substituted ''proposal for the contract, the discussions conducted on the proposal'' for ''negotiation''.

1981—Subsec. (f)(1). Pub. L. 97–86, §907(b), substituted ''$500,000'' for ''$100,000'' in subpars. (A) to (D).

Subsec. (g)(1). Pub. L 97–86, §909(b)(1), struck out ''to be performed outside the forty-eight contiguous States and the District of Columbia'' after ''(and items of supply related to such services)'' in provisions preceding subpar. (A).

Subsec. (h). Pub. L. 97–86, §909(b)(2), added subsec. (h).

1980—Subsec. (f). Pub. L. 96–513, §511(77)(A), designated existing provisions as pars. (1) to (3) and in par. (1), as so designated, substituted ''(A)'' to ''(D)'' for ''(1)'' to ''(4)'', respectively, ''prior'' for ''Prior'' wherever appearing, and ''clause (C)'' for ''(3) above''.

Subsec. (g). Pub. L. 96–513, §511(77)(B), in par. (1) substituted ''that—'' for ''that:'', in par. (2) substituted ''(A) The'' for ''(A) the'', ''(B) Consideration'' for ''(B) consideration'', and ''(C) Consideration'' for ''(C) consideration'', and in par. (3) substituted ''from—'' for ''from:''.

1968—Subsec. (f). Pub. L. 90–512 inserted last par.

Subsec. (g). Pub. L. 90–378 added subsec. (g).

1962—Subsec. (a). Pub. L. 87–653, §1(d), substituted ''subsections (b)–(f)'' for ''subsections (b)–(e)''.

Subsec. (f). Pub. L. 87–653, §1(e), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, §952(b)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 952(b)(1) of Pub. L. 99–661 applicable with respect to contracts or modifications on contracts entered into after end of 120-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 952(d) of Pub. L. 99–661, set out as a note under section 2306a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653 see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

TRANSITION PROVISION

Section 805(c) of Pub. L. 101–189 provided that: ''Subparagraph (C) of paragraph (9) of section 2306(h) of title 10, United States Code, as added by subsection (a), does not apply to programs that are under a multiyear contract on the date of the enactment of this Act [Nov. 29, 1989].''

MULTIYEAR PROCUREMENT AUTHORITY; REQUESTS FOR RELIEF

Pub. L. 100–526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which provided that if for any fiscal year a multiyear contract was to be entered into under 10 U.S.C. 2306(h) was authorized by law for a particular procurement program and that authorization was subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appeared (after negotiations with contractors) that such savings could not be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President was to submit to Congress a request for relief from the specified cost savings that was to be achieved through multiyear contracting for that program and that any such request by the President was to include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions, was repealed and restated as subsec. (h)(11) of this section by Pub. L. 101–189, §805(b), (c).

TECHNICAL DATA AND COMPUTER SOFTWARE PACKAGES; PROCUREMENT; CONTRACTING PERIOD; DEFERRED ORDERING CLAUSE; EXEMPTIONS; REPORT TO CONGRESSIONAL COMMITTEES; DEFINITIONS

Pub. L. 94–361, title VIII, §805, July 14, 1976, 90 Stat. 932, required that military contracts entered into during Oct. 1, 1976 to Sept. 30, 1978 for development or procurement of a major system include a deferred ordering clause with an option to purchase from the contractor technical data and computer software packages relating to the system, directed that such clause require such packages to be sufficiently detailed so as to enable procurement of such system or subsystem from another contractor, authorized that a particular contract may be exempted from the deferred ordering clause if the procuring authority reports to the House and Senate Committees on Armed Services his intent to so contract with an explanation for the exemption, and set out definitions for ''major system'', ''deferred ordering'', and ''technical data''.

CROSS REFERENCES

Cost-type research and development contracts with educational institutions, see section 254a of Title 41, Public Contracts.

Determinations or decisions based on written findings, see section 2310 of this title.

Research and development, see section 2352 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2343 of this title; title 50 section 403c.

§2306a. Cost or pricing data: truth in negotiations

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after December 5, 1990, the price of the contract to the United States is expected to exceed $500,000; and

(ii) in the case of a prime contract entered into on or before December 5, 1990, the price of the contract to the United States is expected to exceed $100,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;

(ii) in the case of a change or modification made after December 5, 1991, to a prime contract that was entered into on or before December 5, 1990, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and

(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $500,000;

(ii) in the case of a subcontract entered into after December 5, 1991, under a prime contract that was entered into on or before December 5, 1990, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and

(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and

(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(B) shall be considered as having been required to make available cost or pricing data under this section.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before December 5, 1990, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Submission of cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

(A) for which the price agreed upon is based on—

(i) adequate price competition;

(ii) established catalog or market prices of commercial items that are sold in substantial quantities to the general public; or

(iii) prices set by law or regulation; or

(B) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the prohibition on the submission of cost or pricing data in paragraph (1)(A), submission of cost or pricing data shall not be required under subsection (a) if—

(A) the contract or subcontract being modified is a contract or subcontract for which submission of cost or pricing data may not be required by reason of paragraph (1)(A); and

(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(3) FAR STANDARDS.— The Federal Acquisition Regulation shall provide clear standards for determining whether the exceptions provided in paragraph (1)(A) apply. In the case of the exception provided in paragraph (1)(A)(i), the regulations shall specify the criteria to be

used to determine whether adequate price competition exists. In the case of the exception provided in paragraph (1)(A)(ii), the regulations shall provide that the exception applies to items that are sold in substantial quantities to the general public, without regard to the quantity of items that may be sold to the Federal Government.

(c) RESTRICTIONS ON ADDITIONAL AUTHORITY TO REQUIRE COST OR PRICING DATA OR OTHER INFORMATION.—

(1) AUTHORITY TO REQUIRE COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—(A) Subject to subparagraph (B), when cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

(B) The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subsection (b)(1)(A).

(C) The head of a procuring activity may not delegate functions under this paragraph.

(2) AUTHORITY TO REQUIRE INFORMATION OTHER THAN CERTIFIED COST OR PRICING DATA.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the head of the procuring activity may require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract.

(d) ADDITIONAL EXCEPTION PROVISIONS REGARDING COMMERCIAL ITEMS.—

(1) PROCUREMENTS BASED ON ADEQUATE PRICE COMPETITION.—To the maximum extent practicable, the head of an agency shall conduct procurements of commercial items on a competitive basis. In any procurement of a commercial item conducted on a competitive basis and based upon adequate price competition, the head of the agency conducting the procurement shall not require cost or pricing data to be submitted under subsection (a) for the contract, subcontract, or modification of the contract or subcontract under the procurement. If additional information is necessary to determine the reasonableness of the price of the contract, subcontract, or modification, the head of the agency shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror.

(2) PROCUREMENTS NOT BASED ON ADEQUATE PRICE COMPETITION.—(A)(i) In any case in which it is not practicable to conduct a procurement of a commercial item covered by subsection (a) on a competitive basis, and the procurement is not covered by an exception in subsection (b), the contracting officer shall seek to obtain from the offeror or contractor information described in clause (ii). When such information is not available from that source, the contracting officer shall seek to obtain such information from another source or sources.

(ii) The information referred[1] in clause (i) is information on prices at which the same item or similar items have been sold in the commercial market that is adequate for evaluating, through price analysis, the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract under the procurement.

(B) The contracting officer shall exempt a contract, subcontract, or modification of a contract or subcontract under the procurement from the requirements of subsection (a) if the contracting officer obtains the information described in subparagraph (A)(ii) in accordance with standards and procedures set forth in the Federal Acquisition Regulation.

(C) A contracting officer may require submission of cost or pricing data under subsection (a) only if the contracting officer makes a written determination that the agency is unable to obtain the information described in subparagraph (A)(ii).

(3) AUTHORITY TO AUDIT.—(A) In accordance with procedures prescribed in the Federal Acquisition Regulation, the head of an agency is authorized to examine all information provided by an offeror, contractor, or subcontractor pursuant to paragraph (2)(A) and all books and records of such offeror, contractor, or subcontractor that directly relate to such information in order to determine whether the agency is receiving accurate information required under this subsection.

(B) The right under subparagraph (A) shall expire 2 years after the date of award of the contract, or 2 years after the date of the modification of the contract, with respect to which the information was provided.

(4) LIMITATIONS ON REQUESTS FOR DATA.—The Federal Acquisition Regulation shall include reasonable limitations on requests under this section for sales data relating to commercial items.

(5) FORM OF INFORMATION.—In requesting information from an offeror under this subsection, a contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(6) CONFIDENTIALITY.—Any information received under this subsection that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or

[1] So in original. Probably should be followed by ''to''.

change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(i) was the sole source of the property or services procured; or

(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—

(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties,,[2] the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

(A) for interest on the amount of such overpayment, to be computed—

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by section 2313(a)(2) of this title.

(h) REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall contain provisions concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed the applicable

[2] So in original.

threshold amount set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.

(i) DEFINITIONS.—In this section:

(1) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(3) COMMERCIAL ITEM.—The term ''commercial item'' has the meaning provided such term in section 4(12) of the Office of Federal Procurement Policy Act.

(Added Pub. L. 99–500, § 101(c) [title X, § 952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, § 101(c) [title X, § 952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, § 952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 804(a), (b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 101–510, div. A, title VIII, § 803(a)(1), (d), Nov. 5, 1990, 104 Stat. 1589, 1590; Pub. L. 102–25, title VII, § 701(b), (f)(8), Apr. 6, 1991, 105 Stat. 113, 115; Pub. L. 102–190, div. A, title VIII, § 804(a)–(c)(1), title X, § 1061(a)(9), Dec. 5, 1991, 105 Stat. 1415, 1416, 1472; Pub. L. 103–355, title I, §§ 1201–1209, Oct. 13, 1994, 108 Stat. 3273–3277.)

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (f)(1)(A)(ii), is classified to section 6621 of Title 26, Internal Revenue Code.

Section 4(12) of the Office of Federal Procurement Policy Act, referred to in subsec. (i)(3), is classified to section 403(12) of Title 41, Public Contracts.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

Provisions similar to those in subsec. (h) of this section were contained in Pub. L. 101–510, div. A, title VIII, § 803(c)(2), Nov. 5, 1990, 104 Stat. 1590, which was set out below, prior to repeal by Pub. L. 103–355, § 1210.

AMENDMENTS

1994—Subsec. (a)(1)(A)(i). Pub. L. 103–355, § 1201(a)(1), struck out ''and before January 1, 1996,'' after ''December 5, 1990,''.

Subsec. (a)(1)(A)(ii). Pub. L. 103–355, § 1201(a)(2), struck out ''or after December 31, 1995,'' after ''December 5, 1990,''.

Subsec. (a)(5). Pub. L. 103–355, § 1202(b), substituted ''subsection (b)(1)(B)'' for ''subsection (b)(2)''.

Subsec. (a)(6). Pub. L. 103–355, § 1201(c), struck out subpar. (A) designation and subpar. (B) which read as follows: ''The head of an agency is not required to modify a contract under subparagraph (A) if that head of an agency determines that the submission of cost or pricing data with respect to that contract should be required under subsection (c).''

Subsec. (a)(7). Pub. L. 103–355, § 1201(b), added par. (7).

Subsec. (b). Pub. L. 103–355, § 1202(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''This section need not be applied to a contract or subcontract—

''(1) for which the price agreed upon is based on—

''(A) adequate price competition;

''(B) established catalog or market prices of commercial items sold in substantial quantities to the general public; or

''(C) prices set by law or regulation; or

''(2) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing his reasons for such determination.''

Subsec. (c). Pub. L. 103–355, § 1203, amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''When cost or pricing data are not required to be submitted by subsection (a), such data may nevertheless be required to be submitted by the head of the agency if the head of the agency determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract. In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

Subsec. (d). Pub. L. 103–355, § 1204, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 103–355, § 1204(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(4)(A)(ii), (B)(ii). Pub. L. 103–355, § 1207, inserted ''or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties,'' after ''(or price of the modification)''.

Subsec. (f). Pub. L. 103–355, § 1204(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 103–355, § 1209, struck out ''with the Department of Defense'' before ''subject to this section'' in introductory provisions.

Subsec. (g). Pub. L. 103–355, § 1205, added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows:

''(1) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section with respect to a contract or subcontract, the head of the agency, acting through any authorized representative of the head of the agency who is an employee of the United States or a member of the armed forces, shall have the right to examine all records of the contractor or subcontractor related to—

''(A) the proposal for the contract or subcontract;

''(B) the discussions conducted on the proposal;

''(C) pricing of the contract or subcontract; or

''(D) performance of the contract or subcontract.

''(2) The right of the head of an agency under paragraph (1) shall expire three years after final payment under the contract or subcontract.

''(3) In this subsection, the term 'records' includes books, documents, and other data.''

Pub. L. 103–355, § 1204(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 103–355, § 1206, added subsec. (h).

Subsec. (i). Pub. L. 103–355, § 1208, amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''In this section, the term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

Pub. L. 103–355, § 1204(1), redesignated subsec. (g) as (i).

1991—Subsec. (a)(1)(A). Pub. L. 102–190, § 804(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of the contract if the price of the contract to the United States is expected to exceed $500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000.''

Subsec. (a)(1)(B). Pub. L. 102–190, § 804(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The contractor for a contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to that contract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, § 701(b)(1), substituted ''the dollar amount applicable under subparagraph (A) to that contract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000''.

Subsec. (a)(1)(C). Pub. L. 102–190, § 804(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if—

''(i) the price of the subcontract is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract; and

''(ii) the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section.''

Subsec. (a)(1)(C)(i). Pub. L. 102–25, § 701(b)(2), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000''.

Subsec. (a)(1)(D). Pub. L. 102–190, § 804(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, § 701(b)(3), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000''.

Subsec. (a)(5). Pub. L. 102–190, § 804(c)(1), substituted ''paragraph (1)(C)'' for ''paragraph (1)(C)(ii)''.

Subsec. (a)(6). Pub. L. 102–190, § 804(b), added par. (6).

Subsec. (e)(1)(A)(i). Pub. L. 102–25, § 701(f)(8), which directed the substitution of ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', could not be executed because ''Internal Revenue Code of 1954'' does not appear.

Subsec. (e)(1)(A)(ii). Pub. L. 102–190, § 1061(a)(9), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1990—Subsec. (a)(1)(A). Pub. L. 101–510, § 803(a)(1)(A), substituted ''$500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(B). Pub. L. 101–510, § 803(a)(1)(B), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(C)(i). Pub. L. 101–510, § 803(a)(1)(C), substituted ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(D). Pub. L. 101–510, § 803(a)(1)(D), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (c). Pub. L. 101–510, § 803(d), inserted at end ''In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

1987—Subsec. (a)(5). Pub. L. 100–180, § 804(b)(1), substituted ''a waiver under subsection (b)(2)'' for ''such a waiver'', and struck out first sentence authorizing head of an agency to waive requirement under this subsection for contractor, subcontractor, or offeror to submit cost or pricing data.

Subsec. (e)(2). Pub. L. 100–180, § 804(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided under subsection (d), the liability of a contractor under this subsection shall not be affected by the contractor's refusal to submit a certification under subsection (a)(2) with respect to the cost or pricing data involved.''

Subsec. (g). Pub. L. 100–180, § 804(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'cost or pricing data' means all information that is verifiable and that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 803(a)(2) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(a)(4), Apr. 6, 1991, 105 Stat. 118, which provided that the amendments to this section by Pub. L. 101–510 would apply to contracts entered into after Dec. 5, 1990, subcontracts under such contracts, and modifications or changes to such contracts and subcontracts, was repealed by Pub. L. 102–190, div. A, title VIII, § 804(c)(2), Dec. 5, 1991, 105 Stat. 1416.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 804(c) of Pub. L. 100–180 provided that:

''(1) Subsection (a) [amending this section] shall apply to any contract, or modification of a contract, entered into after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to contracts, or modifications of contracts, entered into after the end of the 120-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 952(d)] of Pub. L. 99–500 and Pub. L. 99–591, and section 952(d) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) Except as provided in paragraph (2), section 2306a of title 10, United States Code (as added by subsection (a)), and the amendment and repeal made by subsection (b) [amending section 2306 of this title and repealing a provision set out as a note under section 2304 of this title], shall apply with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) Subsection (e) of such section shall apply with respect to contracts or modifications on contracts entered into after November 7, 1985.''

REGULATIONS

Section 803(c) of Pub. L. 101–510, directed Secretary of Defense to prescribe regulations identifying type of procurements for which contracting officers should consider requiring submission of certified cost or pricing data under subsec. (c) of this section, and also directed Secretary to prescribe regulations concerning types of information that offerors had to submit for contracting officer to consider in determining whether price of procurement to Government was fair and reasonable when certified cost or pricing data were not required to be submitted under this section because price of procurement to the United States was not expected to exceed $500,000, such information, at minimum, to include appropriate information on prices at which such offeror had previously sold same or similar products, with such regulations to be prescribed not later than six months after Nov. 5, 1990, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

REVIEW BY INSPECTOR GENERAL

Section 803(b) of Pub. L. 101–510 provided that (1) after increase in threshold for submission of cost or pricing data under subsec. (a) of this section, as amended by section 803(a) of Pub. L. 101–510, had been in effect for three years, Inspector General of Department of Defense was to conduct review of effects of increase in threshold, (2) that such review was to address whether increasing threshold improved acquisition process in terms of reduced paperwork, financial or other savings to government, an increase in number of contractors participating in defense contracting process, and adequacy of information available to contracting officers in cases in which certified cost or pricing data were not required under this section, (3) that Inspector General was to submit to Secretary of Defense a report on review conducted under paragraph (1), with Secretary of Defense required to submit such report to Congress, along with appropriate comments, upon completion of report (and comments) but not later than date on which President submitted budget to Congress pursuant to section 1105 of Title 31, Money and Finance, for fiscal year 1996, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306, 2313, 2343, 2375 of this title; title 15 section 4602.

§ 2306b. Multiyear contracts

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds—

(1) that the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts;

(2) that the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

(3) that there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request funding for the contract at the level required to avoid contract cancellation;

(4) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive;

(5) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic; and

(6) in the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Transportation shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal

year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(g) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(h) DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.—(1) A multiyear contract may not be entered into for any fiscal year under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless each of the following conditions is satisfied:

(A) The Secretary of Defense certifies to Congress that the current five-year defense program fully funds the support costs associated with the multiyear program.

(B) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(2) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings cannot be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(j) DEFENSE CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) INAPPLICABILITY TO AUTOMATIC DATA PROCESSING CONTRACTS.—This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

(*l*) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(Added Pub. L. 103–355, title I, § 1022(a)(1), Oct. 13, 1994, 108 Stat. 3257.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2306 of this title.

§ 2307. Contract financing

(a) PAYMENT AUTHORITY.—The head of any agency may—

(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (a) shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(c) PAYMENT AMOUNT.—Payments made under subsection (a) may not exceed the unpaid contract price.

(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments made under subsection (a) may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(2) The Secretary shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(3) This subsection applies to any contract in an amount greater than $25,000.

(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—(1) Payments under subsection (a) for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) Advance payments made under subsection (a) for commercial items may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).

(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

(A) 95 percent, in the case of a firm considered to be a small business; and

(B) 90 percent, in the case of any other firm.

(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

(3) The Secretary of the Navy shall provide, in each contract for construction or conversion of a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.

(h) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(2) The head of an agency receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(3) The extent of any reduction or suspension of payments by the head of an agency under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(4) A written justification for each decision of the head of an agency whether to reduce or suspend payments under paragraph (2) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(5) The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

(6) Not later than 180 days after the date on which the head of an agency reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of such agency shall—

(A) review the determination of fraud on which the reduction or suspension is based; and

(B) transmit a recommendation to the head of such agency whether the suspension or reduction should continue.

(7) The head of an agency shall prepare for each year a report containing the recommendations made by the remedy coordination official of that agency to reduce or suspend payments under paragraph (2), the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. The Secretary of each military department shall transmit the annual report of such department to the Secretary of Defense. Each such report shall be available to any member of Congress upon request.

(8) This subsection applies to the agencies named in paragraphs (1), (2), (3), and (4) of section 2303(a) of this title.

(9) The head of an agency may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

(10) In this subsection, the term ''remedy coordination official'', with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 131; Aug. 28, 1958, Pub. L. 85–800, § 9, 72 Stat. 967; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 807(c), 87 Stat. 616; July 19, 1988, Pub. L. 100–370, § 1(f)(1)(A), 102 Stat. 846; Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 836(a), (b), title XIII, § 1322(a)(4), 104 Stat. 1615, 1616, 1671; Apr. 6, 1991, Pub. L. 102–25, title VII, § 701(d)(4), (j)(2)(A), 105 Stat. 114, 116; Dec. 5, 1991, Pub. L. 102–190, div. A, title X, § 1061(a)(10), 105 Stat. 1472; Oct. 23, 1992, Pub. L. 102–484, div. A, title X, § 1052(24), 106 Stat. 2500; Oct. 13, 1994, Pub. L. 103–355, title II, § 2001(a)–(g), 108 Stat. 3301, 3302.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2307(a)	41:154(a).	Feb. 19, 1948, ch. 65, § 5, 62 Stat. 23.
2307(b)	41:154 (less (a)).	

In subsection (a), the words ''and appropriate'' are omitted as surplusage. The words ''whether or not the contract previously provided for such payments'' are substituted for the words ''heretofore or hereafter executed''.

In subsection (b), the words ''under subsection (a)'' are inserted for clarity. The words ''provide for'' are substituted for the words ''include as security provision for''. The words ''United States'' are substituted for the word ''Government''.

1988 ACT

Subsection (e) is based on Pub. L. 99–145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (h)(9), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (g) of this section were contained in sections 7312, 7364, and 7521 of this title prior to repeal by Pub. L. 103–355, § 2001(j)(1).

AMENDMENTS

1994—Pub. L. 103–355, § 2001(a)(1), substituted ''Contract financing'' for ''Advance payments'' in section catchline.

Subsec. (a). Pub. L. 103–355, § 2001(a)(2), inserted heading.

Subsec. (a)(2). Pub. L. 103–355, § 2001(c), struck out ''bid'' before ''solicitations''.

Subsec. (b). Pub. L. 103–355, § 2001(a)(7), (b), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 103–355, § 2001(a)(3), inserted heading.

Subsec. (c). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 103–355, § 2001(a)(4), inserted heading.

Subsec. (d). Pub. L. 103–355, § 2001(d), inserted before period at end ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.

Pub. L. 103–355, § 2001(a)(7), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 103–355, § 2001(a)(5), inserted heading.

Subsec. (e). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (h).

Pub. L. 103–355, § 2001(a)(6), inserted heading.

Subsec. (e)(1). Pub. L. 103–355, § 2001(e)(1), substituted ''work accomplished that meets standards established under the contract'' for ''work, which meets standards of quality established under the contract, that has been accomplished''.

Subsec. (e)(3). Pub. L. 103–355, § 2001(e)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''This subsection does not apply to any contract for an amount not in excess of the amount of the small purchase threshold.''

Subsecs. (f), (g). Pub. L. 103–355, § 2001(f), (g), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (e) as (h).

1992—Subsec. (e)(1). Pub. L. 102–484 substituted ''(1)'' for ''(*l*)'' as par. designation after ''(e)''.

1991—Subsec. (d)(3). Pub. L. 102–25, § 701(d)(4), substituted ''any contract for an amount not in excess of the amount of the small purchase threshold'' for ''contracts for amounts less than the maximum amount for small purchases specified in section 2304(g)(2) of this title''.

Subsec. (e). Pub. L. 102–25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 102–190, which directed the substitution of ''(1)'' for ''(*l*)'' as par. designation after ''(f)'', could not be executed because ''(*l*)'' did not appear after ''(f)''.

Pub. L. 102–25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

1990—Subsec. (d). Pub. L. 101–510, § 1322(a)(4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Payments under subsection (a) in the case of any contract, other than partial, progress, or other payments specifically provided for in such contract at the time such contract was initially entered into, may not exceed $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.''

Subsec. (e). Pub. L. 101–510, § 1322(a)(4)(B), redesignated subsec. (e) as (d).

Pub. L. 101–510, § 836(b), inserted at end of par. (1) ''The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.''

Subsec. (f). Pub. L. 101–510, § 836(a), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–370 added subsec. (e).

1973—Subsec. (d). Pub. L. 93–155 added subsec. (d).

1958—Pub. L. 85–800 authorized advance or other payments under contracts for property or services by agency, authorized insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) to unpaid contract price, and reworded generally conditions for making advance payments.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set

out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 836(c) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 701(j)(2)(B), Apr. 6, 1991, 105 Stat. 116, provided that: ''The provisions of section 2307 of title 10, United States Code, that are added by the amendments made by subsections (a) and (b) shall apply with respect to contracts entered into on or after May 6, 1991.''

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

Section 2001(h) of Pub. L. 103–355 provided that: ''The amendments made by this section [amending this section and section 7522 of this title and repealing sections 7312, 7364, and 7521 of this title] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.''

LIMITATIONS ON PROGRESS PAYMENTS

Pub. L. 99–145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688, which required Secretary of Defense to ensure that any progress payment under a defense contract be commensurate with work accomplished at standard of quality in contract, that such payments be limited to 80 percent of work accomplished so long as contract terms are indefinite, that this provision be waived for small purchases, and that this provision apply only to contracts for which solicitations were issued on or after 150 days after Nov. 8, 1985, was repealed and restated in subsec. (e) of this section by Pub. L. 100–370, § 1(f)(1), July 19, 1988, 102 Stat. 846.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Section 807(e) of Pub. L. 93–155 provided that: ''The amendments made by this section [amending this section, section 1431 of Title 50, War and National Defense, and sections 468 and 2092 of Appendix to Title 50] shall not affect the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to the date of enactment of this section [Nov. 16, 1973].''

CROSS REFERENCES

Civilian agencies, advance payments, see section 255 of Title 41, Public Contracts.

Delegation of power, see section 2311 of this title.

Determinations or decisions based on written findings, see section 2310 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2323 of this title; title 50 section 403c.

[§ 2308. Repealed. Pub. L. 103–355, title I, § 1503(b)(1), Oct. 13, 1994, 108 Stat. 3297]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 131; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, § 820(a), 106 Stat. 2458; May 31, 1993, Pub. L. 103–35, title II, § 201(e)(2), 107 Stat. 99; Nov. 30, 1993, Pub. L. 103–160, div. A, title IX, § 904(d)(1), 107 Stat. 1728, related to assignment and delegation of procurement functions and responsibilities. See section 2311 of this title.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2309. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Sept. 13, 1982, Pub. L. 97–258, § 2(b)(1)(B), 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, § 10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words ''an agency named in section 2303 of this title'' are substituted for the words ''any such agency''.

In subsection (b), the words ''an allotment under subsection (a)'' are substituted for the words ''such allotments''.

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–258 substituted ''disbursing official'' for ''disbursing officer''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2310. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(d), or 2313(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Aug. 28, 1958, Pub. L. 85–800, § 10, 72 Stat. 967; Sept. 10, 1962, Pub. L. 87–653, § 1(f), 76 Stat. 529; Sept. 27, 1966, Pub. L. 89–607, § 1(1), 80 Stat. 850; July 5, 1968, Pub. L. 90–378, § 2, 82 Stat. 290; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2725, 98 Stat. 1193; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(16), 99 Stat. 739; Oct. 13, 1994, Pub. L. 103–355, title I, § 1504, 108 Stat. 3297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2310(a)	41:156(a) (1st sentence).	Feb. 19, 1948, ch. 65, § 7(a) (1st sentence), (c), 62 Stat. 24.
2310(b)	41:156(c).	

In subsection (a), the words ''required * * * under'' are substituted for the words ''provided in''.

In subsection (b), the word ''person'' is substituted for the word ''official''. The words ''to which it applies'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section read as follows:

''(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except for determinations and decisions under section 2304 or 2305 of this title, for a class of purchases or contracts. Such a determination or decision, including a determination or decision under section 2304 or 2305 of this title, is final.

''(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

''(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

''(2) support the findings required by section 2306(g)(1) of this title;

''(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

''(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.''

1985—Subsec. (a). Pub. L. 99–145 inserted ''this'' after ''2305 of''.

1984—Subsec. (a). Pub. L. 98–369, § 2725(1), inserted '', except for determinations and decisions under section 2304 or 2305 of title,'' and '', including a determination or decision under section 2304 or 2305 of this title,''.

Subsec. (b). Pub. L. 98–369, § 2725(2), amended subsec. (b) generally, striking out requirement that determinations to negotiate contracts be based on written findings by the contracting officers making the determinations.

1968—Subsec. (b). Pub. L. 90–378 inserted ''section 2306 (g)(1),'' after ''clauses (11)–(16) of section 2304(a), section 2306(c),'', and ''(3) support the findings required by section 2306(g)(1),'' after ''kind or quality required except under such a contract,'', and redesignated former cls. (3) to (5) as (4) to (6), respectively.

1966—Subsec. (b). Pub. L. 89–607 inserted reference to section 2313(c), added cl. (4), and redesignated former cl. (4) as (5).

1962—Subsec. (b). Pub. L. 87–653 substituted ''section 2306(c)'' for ''section 2306'', required decisions to negotiate contracts under section 2304(a)(2), (7), (8), (10) to (12) of this title to be based on a written finding by the person making the decision, which findings shall set out facts and circumstances illustrative of conditions described in section 2304(a)(11) to (16), indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other or that its impracticable to obtain the required property or services except under such contract, indicate why advance payments under section 2307(c) would be in the public interest, or establish with respect to section 2304(a), (2), (7), (8), (10) to (12) that formal advertising would not have been feasible and practicable.

1958—Subsec. (b). Pub. L. 85–800 substituted ''2307(c)'' for ''2307(a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§ 2311. Assignment and delegation of procurement functions and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition and Technology from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

(2) The regulations shall include the following provisions:

(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

(B) A provision that authorizes the Under Secretary of Defense for Acquisition and Technology to require a military department whose participation in a joint acquisition program has been approved for termination or substantial reduction to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Aug. 28, 1958, Pub. L. 85–800, § 11, 72 Stat. 967; Sept. 10, 1962, Pub. L. 87–653, § 1(g), 76 Stat. 529; July 5, 1968, Pub. L. 90–378, § 3, 82 Stat. 290; Dec. 1, 1981, Pub. L. 97–86, title IX, §§ 907(c), 909(f), 95 Stat. 1117, 1120; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2726, 98 Stat. 1194; Oct. 19, 1984, Pub. L. 98–525, title XII, § 1214, 98 Stat. 2592; Oct. 30, 1984, Pub. L. 98–577, title V, § 505, 98 Stat. 3087; Oct. 13, 1994, Pub. L. 103–355, title I, § 1503(a)(1), 108 Stat. 3296.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2311	41:156(a) (less 1st sentence). 41:156(b).	Feb. 19, 1948, ch. 65, § 7(a) (less 1st sentence), (b), 62 Stat. 24.

The words ''in his discretion and'' and ''including the making of such determinations and decisions'' are omitted as surplusage. The words ''except the power to make determinations and decisions'' are substituted for the words ''Except as provided in subsection (b) of this section'' and ''The power of the agency head to make the determinations or decisions specified in paragraphs (12)–(16) of section 151(c) of this title and in section 154(a) of this title shall not be delegable''.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2308 of this title prior to repeal by Pub. L. 103–355, § 1503(b)(1).

AMENDMENTS

1994—Pub. L. 103–355 substituted ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''Except as provided in section 2304(d)(2) of this title, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.''

1984—Pub. L. 98–577 struck out ''(a)'' before ''Except as provided in'' and struck out subsec. (b) which related to delegation of authority by heads of procuring activities of agencies of certain functions.

Pub. L. 98–525 designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 98–369 inserted provision relating to the exception provided in section 2304(d)(2) of this title and struck out provision that the power to make determinations and decisions under cls. (11)–(16) of section 2304(a) of this title could not be delegated, but that the power to make a determination or decision under section 2304(a)(11) of this title could be delegated to any other officer of official of that agency who was responsible for procurement, and only for contracts requiring the expenditure of not more than $5,000,000.

1981—Pub. L. 97–86 struck out in first sentence cl. (1) designation and cl. (2) relating to authorizing of contracts in excess of three years under section 2306(g) of this title, and in second sentence substituted ''$5,000,000'' for ''$100,000''.

1968—Pub. L. 90–378 designated provisions after ''the power to make determinations and decisions'' as cl. (1) and added cl. (2).

1962—Pub. L. 87–653 substituted ''delegated to any other officer'' for ''delegated only to a chief officer'' and ''$100,000'' for ''$25,000''.

1958—Pub. L. 85–800 struck out '', or section 2307(a)'' after ''of section 2304(a)'' in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

CROSS REFERENCES

Research and development contracts, delegation of authority, see section 2356 of this title.

§ 2312. Remission of liquidated damages

Upon the recommendation of the head of an agency, the Comptroller General may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2312	41:155.	Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24.

The words ''a contract, made by that agency, that provides for'' are substituted for the words ''any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2313. Examination of records of contractor

(a) AGENCY AUTHORITY.—(1) The head of an agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(b) DCAA SUBPOENA AUTHORITY.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (a).

(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) The authority provided by paragraph (1) may not be redelegated.

(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committees on Armed Services of the Senate and House of Representatives.

(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

(d) LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(e) LIMITATION.—The authority of the head of an agency under subsection (a), and the authority of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is for an amount not greater than the simplified acquisition threshold.

(g) FORMS OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

(h) USE OF IMAGES OF ORIGINAL RECORDS.—The head of an agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(i) RECORDS DEFINED.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Sept. 27, 1966, Pub. L. 89–607, § 1(2), 80 Stat. 850; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2727(c), 98 Stat. 1195; Nov. 8, 1985, Pub. L. 99–145, title IX, § 935, 99 Stat. 700; Apr. 21, 1987, Pub. L. 100–26, § 7(g)(1), 101 Stat. 282; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIII, § 1301(9), 104 Stat. 1668; Oct. 13, 1994, Pub. L. 103–355, title II, § 2201(a)(1), title IV, § 4102(c), 108 Stat. 3316, 3340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2313(a)	41:153(b) (words after semicolon of last sentence).	Feb. 19, 1948, ch. 65, § 4(b) (words after semicolon of last sentence), 62 Stat. 23.
2313(b)	41:153(c).	Feb. 19, 1948, ch. 65, § 4(c); added Oct. 31, 1951, ch. 652 (as applicable to § 4(c); of the Act of Feb. 19, 1948, ch. 65), 65 Stat. 700.

In subsection (a), the words ''An agency named in section 2303 of this title'' are substituted for the words ''a procuring agency''. The words ''made by that agency under this chapter'' are inserted for clarity.

In subsection (b), the word ''under'' is substituted for the words ''pursuant to authority contained in''. The word ''provide'' is substituted for the words ''include a

clause to the effect''. The words ''are entitled'' are substituted for the words ''shall * * * have * * * the right''. The words ''of the United States'', ''duly authorized'', ''have access to and'', and ''engaged in the performance of'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–355, §2201(a)(1), amended section generally, striking out ''of books'' before ''and records'' in section catchline, and substituting subsecs. (a) to (i) for former subsecs. (a) to (d).

Subsec. (f)(2). Pub. L. 103–355, §4102(c), added par. (2).

1990—Subsec. (c). Pub. L. 101–510 struck out after cl. (2) ''If subsection (b) is not applied to a contract or subcontract based on a determination under clause (2), a written report shall be furnished to the Congress.''

1987—Subsec. (d)(1). Pub. L. 100–26 substituted ''section 2306a'' for ''section 2306(f)''.

1985—Subsec. (d). Pub. L. 99–145 added subsec. (d).

1984—Subsec. (b). Pub. L. 98–369 substituted ''awarded after using procedures other than sealed bid procedures'' for ''negotiated under this chapter''.

1966—Subsec. (b). Pub. L. 89–607, §1(2)(A), substituted ''Except as provided in subsection (c), each'' for ''Each''.

Subsec. (c). Pub. L. 89–607, §1(2)(B), added subsec. (c).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside limits of United States or District of Columbia under Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising authority provided in amendment of this section by Pub. L. 89–607 to exempt certain contracts with foreign contractors from requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. (11) of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. (11) of Part I of Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306a, 2310, 2343 of this title; title 50 section 403c.

§2314. Laws inapplicable to agencies named in section 2303 of this title

Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13) do not apply to the procurement or sale of property or services by the agencies named in section 2303 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 133; Dec. 12, 1980, Pub. L. 96–513, title V, §511(78), 94 Stat. 2927; Nov. 30, 1993, Pub. L. 103–160, div. A, title VIII, §822(b)(2), 107 Stat. 1706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2314	41:160.	Feb. 19, 1948, ch. 65, §11(b), 62 Stat. 25.

AMENDMENTS

1993—Pub. L. 103–160 inserted ''or sale'' after ''procurement''.

1980—Pub. L. 96–513 substituted ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)'' for ''Sections 5, 6, 6a, and 13 of title 41''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Laws inapplicable to procurement by General Services Administration, see section 260 of Title 41, Public Contracts.

§2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

(a) Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is not applicable to the procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of the equipment or services—

(1) involves intelligence activities;

(2) involves cryptologic activities related to national security;

(3) involves the command and control of military forces;

(4) involves equipment that is an integral part of a weapon or weapons system; or

(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

(b) Subsection (a)(5) does not include procurement of automatic data processing equipment or services to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(Added Pub. L. 97–86, title IX, §908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended Pub. L. 97–295, §1(25), Oct. 12, 1982, 96 Stat. 1291.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–295 substituted ''(40 U.S.C. 759)'' for ''(40 U.S.C. 795)''.

EFFECTIVE DATE

Section 908(b) of Pub. L. 97–86 provided that: ''Section 2315 of title 10, United States Code, as added by subsection (a), does not apply to a contract made before the date of the enactment of this Act [Dec. 1, 1981].''

LIMITATION REGARDING TELECOMMUNICATIONS REQUIREMENTS

Pub. L. 103–337, div. A, title X, §1075, Oct. 5, 1994, 108 Stat. 2861, provided that:

''(a) LIMITATION.—No funds available to the Department of Defense or any other Executive agency may be expended to provide for meeting Department of Defense telecommunications requirements through the telecommunications procurement known as 'FTS–2000' or through any other Government-wide telecommunications procurement until—

''(1) the Secretary of Defense submits to the Congress a report containing—

''(A) a certification by the Secretary that the FTS–2000 procurement or the other telecommunications procurement will provide assured, secure telecommunications support (including associated telecommunications services) for Department of Defense activities; and

''(B) a description of how the procurement will be implemented and managed to meet defense information infrastructure requirements, including requirements to support deployed forces and intelligence activities; and

''(2) 30 days elapse after the date on which such report is received by the committees.

''(b) DEFINITIONS.—In this section:

''(1) The term 'defense telecommunications requirements' means requirements for telecommunications equipment and services that, if procured by the Department of Defense, would be exempt from the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) pursuant to section 2315 of title 10, United States Code.

''(2) The term 'Executive agency' has the meaning given such term in section 105 of title 5, United States Code.

''(3) The term 'procurement' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(c) EFFECT ON OTHER LAW.—Nothing in this section may be construed as modifying or superseding, or as intended to impair or restrict authorities or responsibilities under—

''(1) section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759); or

''(2) section 620 of Public Law 103–123 [107 Stat. 1264].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 278g–3, 5527.

§ 2316. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97–295, § 1(26)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2316	10:2304 (note).	Oct. 7, 1970, Pub. L. 91–441, § 507, 84 Stat. 913.

The words ''company, or corporation'' are omitted as included in ''person'' because of section 1:1. The words ''On and after the date of enactment of this Act'' are omitted as executed. The word ''contractor'' is substituted for ''person, company, or corporation to whom such contract has been awarded'' and ''person, company, or corporation to whom any defense contract has been awarded'' to eliminate unnecessary words. The words ''and the identity of the contractor'' are substituted for ''and to whom it was awarded'' for clarity.

[§ 2317. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(2), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 98–525, title XII, § 1215, Oct. 19, 1984, 98 Stat. 2592, related to encouragement of competition and cost savings.

§ 2318. Advocates for competition

(a)(1) In addition to the advocates for competition established or designated pursuant to section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a)), the Secretary of Defense shall designate an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency.

(2) The advocate for competition of the Defense Logistics Agency shall carry out the responsibilities and functions provided for in sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c)).

(b) Each advocate for competition of an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or a grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule), if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, § 7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–25, title VII, § 701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–355, title I, § 1031, Oct. 13, 1994, 108 Stat. 3260.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–355 struck out subsec. (c) which read as follows: ''Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Secretary.''

1991—Subsec. (c). Pub. L. 102–25 substituted ''section 23'' for ''section 21''.

1987—Subsec. (a)(1). Pub. L. 100–26, § 7(d)(4)(A), inserted ''(41 U.S.C. 418(a))'' after ''Policy Act''.

Subsec. (a)(2). Pub. L. 100–26, § 7(d)(4)(B), inserted ''(41 U.S.C. 418(b), (c))'' after ''Policy Act''.

Subsec. (c). Pub. L. 100–26, § 7(d)(4)(C), inserted ''(41 U.S.C. 419)'' after ''Policy Act''.

EFFECTIVE DATE

Section 1216(c)(1) of Pub. L. 98–525 provided that: ''Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2319. Encouragement of new competitors

(a) In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(4) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(5) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(6) The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

(d)(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) Within seven years after the establishment of a qualification requirement under subsection

(b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, § 7(d)(5), (i)(4), (k)(3), Apr. 21, 1987, 101 Stat. 281, 282, 284.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–26, § 7(k)(3), inserted ''the term'' after ''In this section,''.

Subsec. (c)(1), (3). Pub. L. 100–26, § 7(i)(4), substituted ''October 19, 1984,'' for ''the date of the enactment of the Defense Procurement Reform Act of 1984''.

Subsec. (c)(4). Pub. L. 100–26, § 7(d)(5)(A), inserted ''(15 U.S.C. 637(b)(7))'' after ''Small Business Act''.

Subsec. (d)(2). Pub. L. 100–26, § 7(d)(5)(B), inserted ''(15 U.S.C. 632)'' after ''Small Business Act''.

EFFECTIVE DATE

Section 1216(c)(2) of Pub. L. 98–525 provided that: ''Sections 2319, 2320, and 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2320. Rights in technical data

(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(2) Such regulations shall include the following provisions:

(A) In the case of an item or process that is developed by a contractor or subcontractor exclusively with Federal funds (other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

(i) use technical data pertaining to the item or process; or

(ii) release or disclose the technical data to persons outside the government or permit the use of the technical data by such persons.

(B) Except as provided in subparagraphs (C) and (D), in the case of an item or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may restrict the right of the United States to release or disclose technical data pertaining to the item or process to persons outside the government or permit the use of the technical data by such persons.

(C) Subparagraph (B) does not apply to technical data that—

(i) constitutes a correction or change to data furnished by the United States;

(ii) relates to form, fit, or function;

(iii) is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(iv) is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(D) Notwithstanding subparagraph (B), the United States may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) such release, disclosure, or use—

(I) is necessary for emergency repair and overhaul; or

(II) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the United States and is required for evaluational or informational purposes;

(ii) such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(E) In the case of an item or process that is developed in part with Federal funds and in part at private expense, the respective rights of the United States and of the contractor or subcontractor in technical data pertaining to such item or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations) and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall be based upon consideration of all of the following factors:

(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

(iv) Such other factors as the Secretary of Defense may prescribe.

(F) A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract—

(i) to sell or otherwise relinquish to the United States any rights in technical data except—

(I) rights in technical data described in subparagraph (C); or

(II) under the conditions described in subparagraph (D); or

(ii) to refrain from offering to use, or from using, an item or process to which the contractor is entitled to restrict rights in data under subparagraph (B).

(G) The Secretary of Defense may—

(i) negotiate and enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data not otherwise provided under subparagraph (C) or (D), if necessary to develop alternative sources of supply and manufacture;

(ii) agree to restrict rights in technical data otherwise accorded to the United States under this section if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement); or

(iii) permit a contractor or subcontractor to license directly to a third party the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

(3) The Secretary of Defense shall define the terms ''developed'', ''exclusively with Federal funds'', and ''exclusively at private expense'' in regulations prescribed under paragraph (1). In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of definitions under this paragraph.

(b) Regulations prescribed under subsection (a) shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f);

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective; or

(2) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

(d) The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in

this subsection limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2595; amended Pub. L. 98–577, title III, § 301(b), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 99–145, title IX, § 961(d)(1), Nov. 8, 1985, 99 Stat. 703; Pub. L. 99–500, § 101(c) [title X, § 953(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, § 101(c) [title X, § 953(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(a), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(a)(4), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–180, div. A, title VIII, § 808(a), (b), Dec. 4, 1987, 101 Stat. 1128, 1130; Pub. L. 101–189, div. A, title VIII, § 853(b)(2), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 103–355, title VIII, § 8106(a), Oct. 13, 1994, 108 Stat. 3393.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–355 inserted before semicolon at end ''and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f)''.

1989—Subsec. (a)(4). Pub. L. 101–189 struck out par. (4) which provided that for purposes of this subsection, the term ''Federal Acquisition Regulation'' means the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

1987—Subsec. (a)(1). Pub. L. 100–180, § 808(a)(1), inserted at end ''Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.''

Subsec. (a)(2)(A). Pub. L. 100–26, § 7(a)(4)(A), inserted ''(other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply)'' after ''Federal funds''.

Subsec. (a)(2)(E). Pub. L. 100–180, § 808(a)(2), in introductory provisions, substituted ''established'' for ''agreed upon'', struck out comma after ''negotiations)'' and inserted in lieu ''and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall be'', and added cl. (iv).

Subsec. (a)(2)(F). Pub. L. 100–180, § 808(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data except—

''(i) rights in technical data described in subparagraph (C); or

''(ii) under the conditions described in subparagraph (D).''

Subsec. (a)(2)(G)(i). Pub. L. 100–180, § 808(a)(4)(A), substituted ''not otherwise provided under subparagraph (C) or (D),'' for ''pertaining to an item or process developed by such contractor or subcontractor exclusively at private expense'' and struck out ''or'' at end.

Subsec. (a)(2)(G)(ii). Pub. L. 100–180, § 808(a)(4)(B), substituted ''this section'' for ''such regulations'' and ''; or'' for period at end.

Pub. L. 100–26, § 7(a)(4)(B), substituted ''in technical data otherwise accorded to the United States under such regulations'' for ''of the United States in technical data pertaining to an item or process developed entirely or in part with Federal funds''.

Subsec. (a)(2)(G)(iii). Pub. L. 100–180, § 808(a)(4)(C), added cl. (iii).

Subsec. (a)(3). Pub. L. 100–180, § 808(a)(5), substituted '', 'exclusively with Federal funds', and 'exclusively at private expense' '' for ''and 'private expense' '' and inserted at end ''In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of definitions under this paragraph.''

Subsec. (c). Pub. L. 100–180, § 808(b), substituted ''from—'' for ''from'', designated existing provisions beginning with ''prescribing standards'' as par. (1), and added par. (2).

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsec. (a) identically, substituting provision that regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation for provision that such regulations define the legitimate proprietary interest of the United States and a contractor and be part of the single system of Government-wide procurement regulations, detailed what such regulations must contain if the item or process is developed exclusively with Federal funds, exclusively with private funds, or partly with Federal funds and partly with private funds, inserted provision relating to relinquishment of rights in data to the United States, directed the Secretary of Defense to define ''developed'' and ''private expense'', and defined ''Federal Acquisition Regulation''.

1985—Subsec. (a)(1). Pub. L. 99–145 substituted ''the item or process to which the technical data pertains'' for ''the technical data''.

1984—Subsec. (a). Pub. L. 98–577 substituted ''in regulations of the Department of Defense prescribed as part'' for ''in regulations prescribed as part'' in text preceding par. (1).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 808(c) of Pub. L. 100–180 provided that: ''The amendments made by this section [amending this section] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987]; or

''(2) the date on which regulations are prescribed and made effective to implement such amendments.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 953(e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 953(e) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2321 of this title] shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct.

19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

GOVERNMENT-INDUSTRY COMMITTEE ON RIGHTS IN TECHNICAL DATA

Pub. L. 102–190, div. A, title VIII, § 807, Dec. 5, 1991, 105 Stat. 1421, as amended by Pub. L. 102–484, div. A, title VIII, § 814, Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(a) REGULATIONS.—(1) Not later than September 15, 1992, the Secretary of Defense shall prescribe final regulations required by subsection (a) of section 2320 of title 10, United States Code, that supersede the interim regulations prescribed before the date of the enactment of this Act [Dec. 5, 1991] for the purposes of that section.

''(2) In prescribing such regulations, the Secretary shall give thorough consideration to the recommendations of the government-industry committee appointed pursuant to subsection (b).

''(3) Not less than 30 days before prescribing such regulations, the Secretary shall—

''(A) transmit, on a day on which both Houses of Congress are in session, to the Committees on Armed Services of the Senate and House of Representatives a report containing such regulations, the recommendations of the committee, and any matters required by subsection (b)(4); and

''(B) publish such regulations for comment in the Federal Register.

''(4) The regulations shall apply to contracts entered into on or after November 1, 1992, or, if provided in the regulations, an earlier date. The regulations may be applied to any other contract upon the agreement of the parties to the contract.

''(b) GOVERNMENT-INDUSTRY COMMITTEE.—(1) Not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991], the Secretary of Defense shall appoint a government-industry committee for the purpose of developing regulations to recommend to the Secretary of Defense for purposes of carrying out subsection (a).

''(2) The membership of the committee shall include, at a minimum, representatives of the following:

''(A) The Under Secretary of Defense for Acquisition and Technology.

''(B) The acquisition executives of the military departments.

''(C) Prime contractors under major defense acquisition programs.

''(D) Subcontractors and suppliers under major defense acquisition programs.

''(E) Contractors under contracts other than contracts under major defense acquisition programs.

''(F) Subcontractors and suppliers under contracts other than contracts under major defense acquisition programs.

''(G) Small businesses.

''(H) Contractors and subcontractors primarily involved in the sale of commercial products to the Department of Defense.

''(I) Contractors and subcontractors primarily involved in the sale of spare or repair parts to the Department of Defense.

''(J) Institutions of higher education.

''(3) Not later than June 1, 1992, the committee shall submit to the Secretary a report containing the following matters:

''(A) Proposals for the regulations to be prescribed by the Secretary pursuant to subsection (a).

''(B) Proposed legislation that the committee considers necessary to achieve the purposes of section 2320 of title 10, United States Code.

''(C) Any other recommendations that the committee considers appropriate.

''(4) If the Secretary omits from the regulations prescribed pursuant to subsection (a) any regulation proposed by the advisory committee, any regulation proposed by a minority of the committee in any minority report accompanying the committee's report, or any part of such a proposed regulation, the Secretary shall set forth his reasons for each such omission in the report submitted to Congress pursuant to subsection (a)(3)(A).

''(c) RESTRICTION.—(1) Before the expiration of the period described in paragraph (2), the Secretary may not revise or supersede the interim regulations implementing section 2320 of title 10, United States Code, prescribed before the date of the enactment of this Act [Dec. 5, 1991], except to the extent required by law or necessitated by urgent and unforeseen circumstances affecting the national defense.

''(2) The period referred to in paragraph (1) is the period of 30 days of continuous session of Congress beginning on the date on which the report required by subsection (a)(3) is transmitted to the Committees on Armed Services of the Senate and House of Representatives. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.

''(d) DEFINITION.—In this section, the term 'major defense acquisition program' has the meaning given such term by section 2430 of title 10, United States Code.''

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT

Pub. L. 102–190, div. A, title VIII, § 808, Dec. 5, 1991, 105 Stat. 1423, required Secretary of Defense to prescribe regulations ensuring that any Department of Defense employee or member of the armed forces with an appropriate security clearance who is engaged in oversight of an acquisition program maintains control of the employee's or member's work product, provided that procedures for protecting unauthorized disclosure of classified information by contractors do not require such an employee or member to relinquish control of his or her work product to any such contractor, required implementing regulations not later than 120 days after Dec. 5, 1991, and provided that this section would cease to be effective on Sept. 30, 1992.

DEADLINE FOR REVISION OF REGULATIONS

Section 101(c) [title X, § 953(d)] of Pub. L. 99–500 and Pub. L. 99–591, and section 953(d) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, required that proposed regulations under subsec. (a)(1) of this section be published in Federal Register for comment not later than 90 days after Oct. 18, 1986, and that proposed final regulations be published in Federal Register not later than 180 days after Oct. 18, 1986.

§ 2321. Validation of proprietary data restrictions

(a) CONTRACTS COVERED BY SECTION.—This section applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.—A contract subject to this section shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in subsection (i)) asserted by the contractor or subcontractor.

(c) REVIEW OF RESTRICTIONS.—(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted

before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

(d) CHALLENGES TO RESTRICTIONS.—(1) The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section if the Secretary finds that—

(A) reasonable grounds exist to question the current validity of the asserted restriction; and

(B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(2)(A) A challenge to an asserted use or release restriction may not be made under paragraph (1) after the end of the three-year period described in subparagraph (B) unless the technical data involved—

(i) are publicly available;

(ii) have been furnished to the United States without restriction; or

(iii) have been otherwise made available without restriction.

(B) The three-year period referred to in subparagraph (A) is the three-year period beginning on the later of—

(i) the date on which final payment is made on the contract under which the technical data are required to be delivered; or

(ii) the date on which the technical data are delivered under the contract.

(3) If the Secretary challenges an asserted use or release restriction under paragraph (1), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

(A) state the specific grounds for challenging the asserted restriction;

(B) require a response within 60 days justifying the current validity of the asserted restriction; and

(C) state that evidence of a justification described in paragraph (4) may be submitted.

(4) It is a justification of an asserted use or release restriction challenged under paragraph (1) that, within the three-year period preceding the challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(A) such validation occurred after a challenge to the validated restriction under this subsection; and

(B) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

(e) TIME FOR CONTRACTORS TO SUBMIT JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(f) PRESUMPTION OF DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE FOR COMMERCIAL ITEMS CONTRACTS.—In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial items, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the item was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to subsection (d)(3). In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the item was not developed exclusively at private expense.

(g) DECISION BY CONTRACTING OFFICER.—(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (d)(3), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to subsection (d)(3), the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(h) CLAIMS.—If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(i) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—(1) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(j) USE OR RELEASE RESTRICTION DEFINED.—In this section, the term ''use or release restriction'', with respect to technical data delivered to the United States under a contract subject to this section, means a restriction by the contractor or subcontractor on the right of the United States—

(1) to use such technical data; or

(2) to release or disclose such technical data to persons outside the Government or permit the use of such technical data by persons outside the Government.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2597; amended Pub. L. 99–500 §101(c) [title X, §953(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–171, and Pub. L. 99–591, §101(c) [title X, §953(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–171; Pub. L. 99–661, div. A, title IX, formerly title IV, §953(b), Nov. 14, 1986, 100 Stat. 3951, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, Pub. L. 100–26, §7(a)(5), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100–180, div. A, title XII, §1231(6), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103–35, title II, §201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title VIII, §8106(b), Oct. 13, 1994, 108 Stat. 3393.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (h), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Another section 2321 of this title was contained in chapter 138 and was renumbered section 2341 of this title.

AMENDMENTS

1994—Subsecs. (f) to (j). Pub. L. 103–355 added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

1993—Subsec. (d)(1)(B). Pub. L. 103–35 substituted ''adherence'' for ''adherance''.

1987—Subsec. (a). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (a) and struck out former subsec. (a) which read as follows: ''A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data.''

Subsec. (b). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any restriction on the right of the United States to release or disclose technical data delivered under a contract to persons outside the Government, or to permit the use of such technical data by such persons. Such review shall be conducted before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later.

''(2)(A) If the Secretary determines, at any time before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later, that a challenge to a restriction is warranted, the Secretary shall provide written notice to the contractor or subcontractor asserting the restriction. Such a determination shall be based on a finding by the Secretary that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time. Such notice shall—

''(i) state the specific grounds for challenging the asserted restriction;

''(ii) require a response within 60 days justifying the current validity of the asserted restriction; and

''(iii) state that evidence of a validation by the Department of Defense of a restriction identical to the asserted restriction within the three-year period preceding the challenge shall serve as justification for the asserted restriction if—

''(I) the validation occurred after a review of the validated restriction under this subsection; and

''(II) the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided.

''(B) Notwithstanding subparagraph (A), the United States may challenge a restriction on the release, disclosure, or use of technical data delivered under a contract at any time if such technical data—

''(i) is publicly available;

''(ii) has been furnished to the United States without restriction; or

''(iii) has been otherwise made available without restriction.''

Subsec. (c). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(4)(A). Pub. L. 99–180, §1231(6)(A), substituted ''subsection'' for ''paragraph''.

Subsec. (e). Pub. L. 100–26, §7(a)(5)(A)(i), (B), redesignated former subsec. (c) as (e), inserted heading, and substituted ''If a contractor or subcontractor asserting a use or release restriction'' for ''If a contractor or subcontractor asserting a restriction subject to this section''. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 100–26, §7(a)(5)(A)(i), (C), redesignated former subsec. (d) as (f), inserted heading, and substituted ''subsection (d)(3)'' for ''subsection (b)'' in two places. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 100–26, §7(a)(5)(A)(i), (D), redesignated former subsec. (e) as (g) and inserted heading.

Subsec. (h). Pub. L. 100–26, §7(a)(5)(A)(i), (E)(i), redesignated former subsec. (f) as (h) and inserted heading.

Subsec. (h)(1). Pub. L. 100–26, §7(a)(5)(E)(ii)–(iv), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions, struck out ''on the right of the United States to use the technical data'' after ''the restriction'' in subpar. (A), and substituted ''asserting the restriction'' for '', as appropriate,'' in subpar. (B).

Subsec. (h)(2). Pub. L. 100–26, §7(a)(5)(E)(v), substituted ''the use or release restriction'' for ''the re-

striction on the right of the United States to use such technical data'' in introductory provisions.

Subsec. (i). Pub. L. 100–180, § 1231(6)(B), inserted ''or subcontractor'' in introductory provisions.

Pub. L. 100–26, § 7(a)(5)(F), added subsec. (i).

1986—Subsecs. (a), (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsecs. (a) and (b) identically. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that—

''(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

''(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

''(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall—

''(1) state the grounds for challenging the asserted restriction; and

''(2) require a response within 60 days justifying the current validity of the asserted restriction.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(d)(1) of Pub. L. 100–26 provided that: ''The amendments to section 2321 of title 10, United States Code, made by section 7(a)(5) shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 applicable to contracts for which solicitations are issued after end of 210-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 953(e) of Pub. L. 99–661, set out as a note under section 2320 of this title.

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2320 of this title.

[§ 2322. Repealed. Pub. L. 102–484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500]

Section, added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100–26, § 7(a)(6), Apr. 21, 1987, 101 Stat. 278; Pub. L. 100–180, div. A, title XII, § 1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987.

Another section 2322 of this title was contained in chapter 138 and was renumbered section 2342 of this title.

§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education

(a) GOAL.—(1) Except as provided in subsection (d), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration in each fiscal year for the total combined amount obligated for contracts and subcontracts entered into with—

(A) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

(B) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

(C) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d–5(3)),[1] which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).[1]

(2) The head of the agency shall establish a specific goal within the overall 5 percent goal for the award of prime contracts and subcontracts to historically Black colleges and universities and minority institutions in order to increase the participation of such colleges and universities in the program provided for by this section.

(3) The Federal Acquisition Regulation (issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c))[1] shall provide procedures or guidelines for contracting officers to set goals which agency prime contractors that are required to submit subcontracting plans under section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agency's program to meet the 5 percent goal specified in paragraph (1) should meet in awarding subcontracts, including subcontracts to minority-owned media, to entities described in that paragraph.

(b) AMOUNT.—With[2] respect to the Department of Defense, the requirements of subsection (a) for any fiscal year apply to the combined total of the following amounts:

(A) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for procurement.

(B) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for research, development, test, and evaluation.

(C) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for military construction.

(D) Funds obligated for contracts entered into with the Department of Defense for operation and maintenance.

[1] So in original. Probably should be preceded by a closing parenthesis.

[2] So in original. Probably should be ''(1) With''.

(2) With respect to the Coast Guard, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the Coast Guard for such fiscal year.

(3) With respect to the National Aeronautics and Space Administration, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the National Aeronautics and Space Administration for such fiscal year.

(c) TYPES OF ASSISTANCE.—(1) To attain the goal specified in subsection (a)(1), the head of an agency shall provide technical assistance to the entities referred to in that subsection and, in the case of historically Black colleges and universities and minority institutions, shall also provide infrastructure assistance.

(2) Technical assistance provided under this section shall include information about the program, advice about agency procurement procedures, instruction in preparation of proposals, and other such assistance as the head of the agency considers appropriate. If the resources of the agency are inadequate to provide such assistance, the head of the agency may enter into contracts with minority private sector entities with experience and expertise in the design, development, and delivery of technical assistance services to eligible individuals, business firms and institutions, acquisition agencies, and prime contractors. Agency contracts with such entities shall be awarded annually, based upon, among other things, the number of minority small business concerns, historically Black colleges and universities, and minority institutions that each such entity brings into the program.

(3) Infrastructure assistance provided by the Department of Defense under this section to historically Black colleges and universities and to minority institutions may include programs to do the following:

(A) Establish and enhance undergraduate, graduate, and doctoral programs in scientific disciplines critical to the national security functions of the Department of Defense.

(B) Make Department of Defense personnel available to advise and assist faculty at such colleges and universities in the performance of defense research and in scientific disciplines critical to the national security functions of the Department of Defense.

(C) Establish partnerships between defense laboratories and historically Black colleges and universities and minority institutions for the purpose of training students in scientific disciplines critical to the national security functions of the Department of Defense.

(D) Award scholarships, fellowships, and the establishment of cooperative work-education programs in scientific disciplines critical to the national security functions of the Department of Defense.

(E) Attract and retain faculty involved in scientific disciplines critical to the national security functions of the Department of Defense.

(F) Equip and renovate laboratories for the performance of defense research.

(G) Expand and equip Reserve Officer Training Corps activities devoted to scientific disciplines critical to the national security functions of the Department of Defense.

(H) Provide other assistance as the Secretary determines appropriate to strengthen scientific disciplines critical to the national security functions of the Department of Defense or the college infrastructure to support the performance of defense research.

(4) The head of the agency shall, to the maximum extent practical, carry out programs under this section at colleges, universities, and institutions that agree to bear a substantial portion of the cost associated with the programs.

(d) APPLICABILITY.—Subsection (a) does not apply to the Department of Defense—

(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

(2) if the Secretary notifies Congress of such determination and the reasons for such determination.

(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—To attain the goal of subsection (a):

(1)(A) The head of the agency shall—

(i) ensure that substantial progress is made in increasing awards of agency contracts to entities described in subsection (a)(1);

(ii) exercise his utmost authority, resourcefulness, and diligence;

(iii) in the case of the Department of Defense, actively monitor and assess the progress of the military departments, Defense Agencies, and prime contractors of the Department of Defense in attaining such goal; and

(iv) in the case of the Coast Guard and the National Aeronautics and Space Administration, actively monitor and assess the progress of the prime contractors of the agency in attaining such goal.

(B) In making the assessment under clauses (iii) and (iv) of subparagraph (A), the head of the agency shall evaluate the extent to which use of the authority provided in paragraphs (2) and (3) and compliance with the requirement in paragraph (4) is effective for facilitating the attainment of the goal.

(2) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency shall make advance payments under section 2307 of this title to contractors described in subsection (a). The Federal Acquisition Regulation shall provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.

(3) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency may enter into contracts using less than full and open competitive procedures (including awards under section 8(a) of the Small Business Act) and partial set asides for entities described in subsection (a)(1), but shall pay a price not exceeding fair market cost by more than 10 percent in payment per contract to contractors or subcontractors described in subsection (a). The head of an agen-

cy shall adjust the percentage specified in the preceding sentence for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.

(4) To the extent practicable, the head of an agency shall maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program.

(5) Each head of an agency shall prescribe regulations which provide for the following:

(A) Procedures or guidance for contracting officers to provide incentives for prime contractors referred to in subsection (a)(3) to increase subcontractor awards to entities described in subsection (a)(1).

(B) A requirement that contracting officers emphasize the award of contracts to entities described in subsection (a)(1) in all industry categories, including those categories in which such entities have not traditionally dominated.

(C) Guidance to agency personnel on the relationship among the following programs:

(i) The program implementing this section.

(ii) The program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(iii) The small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

(D) With respect to an agency procurement which is reasonably likely to be set aside for entities described in subsection (a)(1), a requirement that (to the maximum extent practicable) the procurement be designated as such a set-aside before the solicitation for the procurement is issued.

(E) Policies and procedures which, to the maximum extent practicable, will ensure that current levels in the number or dollar value of contracts awarded under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)) are maintained and that every effort is made to provide new opportunities for contract awards to eligible entities, in order to meet the goal of subsection (a).

(F) Implementation of this section in a manner which will not alter the procurement process under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(G) A requirement that one factor used in evaluating the performance of a contracting officer be the ability of the officer to increase contract awards to entities described in subsection (a)(1).

(H) Increased technical assistance to entities described in subsection (a)(1).

(f) PENALTIES AND REGULATIONS RELATING TO STATUS.—(1) Whoever for the purpose of securing a contract or subcontract under subsection (a) misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)), shall be punished by imprisonment for not more than one year, or a fine under title 18, or both.

(2) The Federal Acquisition Regulation shall prohibit awarding a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(*o*)(1) of the Small Business Act (15 U.S.C. 644(*o*)(1)).

(g) INDUSTRY CATEGORIES.—(1) To the maximum extent practicable, the head of the agency shall—

(A) ensure that no particular industry category bears a disproportionate share of the contracts awarded to attain the goal established by subsection (a); and

(B) ensure that contracts awarded to attain the goal established by subsection (a) are made across the broadest possible range of industry categories.

(2) Under procedures prescribed by the head of the agency, a person may request the Secretary to determine whether the use of small disadvantaged business set asides by a contracting activity of the agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity for the purposes of this section. Upon making a determination that a particular industry category is bearing a disproportionate share, the head of the agency shall take appropriate actions to limit the contracting activity's use of set asides in awarding contracts in that particular industry category.

(h) COMPLIANCE WITH SUBCONTRACTING PLAN REQUIREMENTS.—(1) The Federal Acquisition Regulation shall contain regulations to ensure that potential contractors submitting sealed bids or competitive proposals to the agency for procurement contracts to be awarded under the program provided for by this section are complying with applicable subcontracting plan requirements of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(2) The regulations required by paragraph (1) shall ensure that, with respect to a sealed bid or competitive proposal for which the bidder or offeror is required to negotiate or submit a subcontracting plan under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), the subcontracting plan shall be a factor in evaluating the bid or proposal.

(i) ANNUAL REPORT.—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.

(2) The report required under paragraph (1) shall include the following:

(A) A full explanation of any progress toward attaining the goal of subsection (a).

(B) A plan to achieve the goal, if necessary.

(3) The report required under paragraph (1) shall also include the following:

(A) The aggregate differential between the fair market price of all contracts awarded pur-

suant to subsection (e)(3) and the estimated fair market price of all such contracts had such contracts been entered into using full and open competitive procedures.

(B) An analysis of the impact that subsection (a) shall have on the ability of small business concerns not owned and controlled by socially and economically disadvantaged individuals to compete for contracts with the agency.

(C) A description of the percentage of contracts (actions), the total dollar amount (size of action), and the number of different entities relative to the attainment of the goal of subsection (a), separately for Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and other minorities.

(j) DEFINITIONS.—In this section:

(1) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

(k) EFFECTIVE DATE.—(1) This section applies in the Department of Defense to each of fiscal years 1987 through 2000.

(2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through 2000.

(Added and amended Pub. L. 102–484, div. A, title VIII, §§801(a)(1), (b)–(f), 802, Oct. 23, 1992, 106 Stat. 2442–2444, 2446; Pub. L. 103–35, title II, §202(a)(6), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VIII, §811(a)–(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103–355, title VII, §7105, Oct. 13, 1994, 108 Stat. 3369.)

REFERENCES IN TEXT

Section 8(a) of the Small Business Act, referred to in subsec. (e)(3), is classified to section 637(a) of Title 15, Commerce and Trade.

CODIFICATION

Section, as added by Pub. L. 102–484, §801(a)(1), consists of text of Pub. L. 99–661, div. A, title XII, §1207, Nov. 14, 1986, 100 Stat. 3973, revised by Pub. L. 102–484 by substituting ''each of fiscal years 1987 through 2000'' for ''each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993'' in subsec. (a)(1), ''of this title'' for ''of title 10, United States Code,'' in subsec. (e)(2), and ''each of fiscal years 1987 through 2000'' for ''each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993'' in subsec. (h). Section 1207 of Pub. L. 99–661, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, §801(h)(1), Oct. 23, 1992, 106 Stat. 2445.

PRIOR PROVISIONS

A prior section 2323, added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99–500, §101(c) [title X, §926(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, §101(c) [title X, §926(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title IX, formerly title IV, §926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101–510, div. A, title VIII, §804(a), Nov. 5, 1990, 104 Stat. 1591.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally to extend defense contract goal for small disadvantaged businesses and certain institutions of higher education to Coast Guard and National Aeronautics and Space Administration.

1993—Subsec. (a)(1)(B). Pub. L. 103–160, §811(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''historically Black colleges and universities; and''.

Subsec. (a)(1)(C). Pub. L. 103–160, §811(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''minority institutions (as defined in paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058)), including any nonprofit research institution that was an integral part of a historically Black college or university before November 14, 1986.''

Subsec. (f)(2). Pub. L. 103–160, §811(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense shall prescribe regulations which provide for the following:

''(A) A requirement that a business which represents itself as an entity described in subsection (a)(1) and is seeking a Department of Defense contract maintain its status as an entity at the time of contract award.

''(B) A prohibition on the award of a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(*o*)(1) of the Small Business Act (15 U.S.C. 644(*o*)(1)).''

Subsec. (i). Pub. L. 103–35 amended and made technical amendment to directory language of Pub. L. 102–484, §801(f). See 1992 Amendment note for subsec. (h) below.

Subsec. (i)(3)(D). Pub. L. 103–160, §811(e), added subpar. (D).

1992—Subsec. (a)(3). Pub. L. 102–484, §801(b), added par. (3).

Subsec. (e). Pub. L. 102–484, §801(c)(1), substituted ''subsection (a):'' for ''subsection (a)—'' in introductory provisions.

Subsec. (e)(1). Pub. L. 102–484, §801(c)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Secretary of Defense shall exercise his utmost authority, resourcefulness, and diligence.''

Subsec. (e)(2). Pub. L. 102–484, §801(c)(3), inserted at end ''The Secretary shall prescribe regulations that provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.''

Subsec. (e)(3). Pub. L. 102–484, §801(c)(4), inserted ''and partial set asides for entities described in subsection (a)(1)'' after ''Act''.

Subsec. (e)(5). Pub. L. 102–484, §801(c)(5), added par. (5).

Subsec. (f). Pub. L. 102–484, §801(d), substituted ''Penalties and Regulations Relating to Status'' for ''Penalties for Misrepresentation'' in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (g). Pub. L. 102–484, §801(e)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102–484, §802(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 102–484, §801(f), as amended by Pub. L. 103–35, substituted ''Report'' for ''Reports'' in heading, struck out ''July 15 of each year, the Secretary of Defense shall submit to Congress a report on the progress toward meeting the goal of subsection (a) during the current fiscal year. (2) Not later than'' after ''(1) Not later than'', struck out ''final'' after ''Congress a'', and substituted ''Secretary toward attaining'' for ''Secretary with'' in former par. (2), redesignated par. (3) as (2) and substituted ''report required under paragraph (1) shall'' for ''reports described in paragraphs (1) and (2) shall each'', redesignated par. (4) as (3) and substituted ''report required under paragraph (1)'' for ''reports required under paragraph (2)'', and struck out par. (5) which read as follows: ''The first report required by this subsection shall be submitted between May 1 and May 30, 1987.''

Pub. L. 102–484, §801(e)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–484, § 802(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 102–484, § 801(e)(1), redesignated subsec. (h) as (i).

Subsec. (j). Pub. L. 102–484, § 802(1), redesignated subsec. (i) as (j).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 801(f) of Pub. L. 102–484 provided that the amendment made by that section is effective Oct. 1, 1993.

REGULATIONS

Section 811(d) of Pub. L. 103–160 provided that:

''(1) The Secretary of Defense shall propose amendments to the Department of Defense Supplement to the Federal Acquisition Regulation that address the matters described in subsection (g) and subsection (h)(2) of section 2323 of title 10, United States Code.

''(2) Not later than 15 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall publish such proposed amendments in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b). The Secretary shall provide a period of at least 60 days for public comment on the proposed amendments.

''(3) The Secretary shall publish the final regulations not later than 120 days after the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304, 2304a, 2323a of this title; title 15 section 644.

§ 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 2323 of this title and section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Indian lands'' has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4)).

(2) The term ''Indian'' has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(3) The term ''Indian tribe'' has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(4) The term ''tribally owned corporation'' means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102–484, div. A, title VIII, § 801(g)(1), Oct. 23, 1992, 106 Stat. 2445.)

CODIFICATION

Section, as added by Pub. L. 102–484, consists of text of Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102–484 by substituting ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'' in subsec. (a). Section 832 of Pub. L. 101–189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, § 801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

§ 2324. Allowable costs under defense contracts

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of the head of an agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and

(2) is appealable in the manner provided in section 7 of such Act (41 U.S.C. 606).

(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:

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

(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

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

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

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

(F) Costs of alcoholic beverages.

(G) Contributions or donations, regardless of the recipient.

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

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

(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(K) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') which is—

(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case

exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

(2)(A) The Secretary of Defense may provide in a military banking contract that the provisions of paragraphs (1)(M) and (1)(N) shall not apply to costs incurred under the contract by the contractor for payment of mandated foreign national severance pay. The Secretary may include such a provision in a military banking contract only if the Secretary determines, with respect to that contract, that the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals.

(B) In subparagraph (A):

(i) The term ''military banking contract'' means a contract between the Secretary and a financial institution under which the financial institution operates a military banking facility outside the United States for use by members of the armed forces stationed or deployed outside the United States and other authorized personnel.

(ii) The term ''mandated foreign national severance pay'' means severance pay paid by a contractor to a foreign national employee the payment of which by the contractor is required in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract.

(C) Subparagraph (A) does not apply to a contract with a financial institution that is owned or controlled by citizens or nationals of a foreign country, as determined by the Secretary of Defense awarding the contract.[1] Such a determination shall be made in accordance with the criteria set out in paragraph (1) of section 4(g) of title III of the Act of March 3, 1933 (41 U.S.C. 10b–1) (commonly referred to as the Buy American Act) and the policy guidance referred to in paragraph (2)(A) of that section.

(3)(A) Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, the head of an agency awarding a covered contract (other than a contract to which paragraph (2) applies) may waive the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the head of the agency determines that—

(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for members of the armed forces stationed or deployed outside the United States;

(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(B) The head of an agency shall include in the solicitation for a covered contract a statement indicating—

(i) that a waiver has been granted under subparagraph (A) for the contract; or

(ii) whether the head of the agency will consider granting such a waiver, and, if the agency head will consider granting a waiver, the criteria to be used in granting the waiver.

(C) The head of an agency shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

(4) The provisions of the Federal Acquisition Regulation implementing this section may establish appropriate definitions, exclusions, limitations, and qualifications.

(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(A) Air shows.

(B) Membership in civic, community, and professional organizations.

(C) Recruitment.

(D) Employee morale and welfare.

(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(F) Community relations.

(G) Dining facilities.

(H) Professional and consulting services, including legal services.

(I) Compensation.

(J) Selling and marketing.

(K) Travel.

(L) Public relations.

[1] So in original. The words ''awarding the contract'' probably should not appear.

(M) Hotel and meal expenses.
(N) Expense of corporate aircraft.
(O) Company-furnished automobiles.
(P) Advertising.
(Q) Conventions.

(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of such costs.

(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of the contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(g) APPLICABILITY OF REGULATIONS TO SUBCONTRACTORS.—The regulations referred to in subsections (e) and (f)(1) shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

(2) The head of the agency or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the Secretary—

(A) determines in such case that it would be in the interest of the United States to waive such certification; and

(B) states in writing the reasons for that determination and makes such determination available to the public.

(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation, and (B) results in a disposition described in paragraph (2).

(2) A disposition referred to in paragraph (1)(B) is any of the following:

(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).

(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

(D) A final decision—

(i) to debar or suspend the contractor;
(ii) to rescind or void the contract; or
(iii) to terminate the contract for default;

by reason of the violation or failure referred to in paragraph (1).

(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency or Secretary of the military department concerned that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head or Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency or military department.

(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed

the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

(6) In this subsection:

(A) The term ''proceeding'' includes an investigation.

(B) The term ''costs'', with respect to a proceeding—

(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

(ii) includes—

(I) administrative and clerical expenses;

(II) the cost of legal services, including legal services performed by an employee of the contractor;

(III) the cost of the services of accountants and consultants retained by the contractor; and

(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

(C) The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(*l*) DEFINITIONS.—In this section:

(1)(A) The term ''covered contract'' means a contract for an amount in excess of $500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

(B) Effective on October 1 of each year that is divisible by five, the amount set forth in subparagraph (A) shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(2) The term ''head of the agency'' or ''agency head'' does not include the Secretary of a military department.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; amended Pub. L. 99–190, § 101(b) [title VIII, § 8112(a)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VIII, § 805(a), Dec. 4, 1987, 101 Stat. 1126; Pub. L. 100–370, § 1(f)(2)(A), (3)(A), July 19, 1988, 102 Stat. 846; Pub. L. 100–456, div. A, title III, § 322(a), title VIII, §§ 826(a), 832(a), Sept. 29, 1988, 102 Stat. 1952, 2022, 2023; Pub. L. 100–463, title VIII, § 8105(a), Oct. 1, 1988, 102 Stat. 2270–36; Pub. L. 100–526, title I, § 106(a)(2), Oct. 24, 1988, 102 Stat. 2625; Pub. L. 100–700 § 8(b), Nov. 19, 1988, 102 Stat. 4636; Pub. L. 101–189, div. A, title III, § 311(a)(1), title VIII, § 853(a)(1), (b)(3), Nov. 29, 1989, 103 Stat. 1411, 1518; Pub. L. 101–510, div. A, title XIII, § 1301(10), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. A, title III, § 346(a), Dec. 5, 1991, 105 Stat. 1346; Pub. L. 102–484, div. A, title VIII, § 818(a), title X, § 1052(26), title XIII, § 1352(b), Oct. 23, 1992, 106 Stat. 2457, 2500, 2559; Pub. L. 103–355, title II, § 2101(a)–(d), Oct. 13, 1994, 108 Stat. 3306–3308.)

HISTORICAL AND REVISION NOTES

Subsection (e)(1)(L) is based on section 2399 of this title as enacted by Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293.

Section 1(f)(2) of the bill would transfer the provisions of existing 10 U.S.C. 2399 to a new subparagraph (L) of 10 U.S.C. 2324(e)(1). The existing section 2399 prohibits the use of appropriated funds to reimburse a defense contractor for insurance against the contractor's costs of correcting defects in the contractor's materials or workmanship. The transfer would add the provision to the list of contractor costs which are not allowable as expenses which may be paid by the Department of Defense under a contract. This allowable cost limitation applies only to contracts for more than $100,000 other than fixed price contracts without cost incentives (see 10 US.C. 2324(k)). The committee determined that it is appropriate to treat the subject matter of section 2399 in the same manner as other provisions relating to allowable costs of defense contractors and notes that section 2324, providing a more comprehensive treatment of allowable costs, was enacted after section 2399. The committee recognizes that contracts for amounts less than $100,000 and fixed price contracts without cost incentives are covered by the existing section 2399 and would not be covered by the provision as transferred. The committee determined that in practice the existing section 2399 would not have significant applicability to such contracts and that the transfer is appropriate as part of this bill.

Subsection (j) is based on Pub. L. 99–145, title IX, § 933, Nov. 8, 1985, 99 Stat. 700.

CODIFICATION

Another section 2324 of this title was contained in chapter 138 and was renumbered section 2344 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355, § 2101(a), inserted heading and substituted ''head of an agency'' for ''Secretary of Defense'', ''agency'' for ''Department of Defense'', and ''applicable agency supplement'' for ''the Department of Defense Supplement''.

Subsec. (b). Pub. L. 103–355, § 2101(a)(2)(A), inserted heading.

Subsec. (b)(1). Pub. L. 103–355, § 2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 103–355, § 2101(a)(2)(B), substituted ''provisions in the Federal Acquisition Regulation'' for ''regulations issued by the Secretary''.

Subsec. (b)(2). Pub. L. 103–355, § 2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places.

Subsec. (c). Pub. L. 103–355, § 2101(a)(3), inserted heading and substituted ''The Federal Acquisition Regulation shall provide'' for ''The Secretary shall prescribe regulations providing''.

Subsec. (d). Pub. L. 103–355, § 2101(a)(4), inserted heading and substituted ''the head of an agency'' for ''the Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–355, § 2101(a)(5)(A), inserted heading.

Subsec. (e)(1)(B). Pub. L. 103–355, § 2101(b), substituted '', a State legislature, or a legislative body of a political subdivision of a State'' for ''or a State legislature''.

Subsec. (e)(1)(D). Pub. L. 103–355, § 2101(a)(5)(B), substituted ''provisions of the Federal Acquisition Regulation'' for ''regulations of the Secretary of Defense''

Subsec. (e)(1)(M). Pub. L. 103–355, § 2101(a)(5)(C), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary of Defense''.

Subsec. (e)(2)(A). Pub. L. 103–355, § 2101(a)(5)(D), substituted ''the Secretary of Defense may provide'' for ''the Secretary may provide''.

Subsec. (e)(2)(C). Pub. L. 103–355, § 2101(a)(5)(E), substituted ''Secretary of Defense'' for ''head of the agency''.

Subsec. (e)(3)(A). Pub. L. 103–355, § 2101(a)(5)(F), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary''.

Subsec. (e)(4). Pub. L. 103–355, § 2101(a)(5)(G), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Secretary shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications.''

Subsec. (f)(1). Pub. L. 103–355, § 2101(a)(6)(A), inserted heading and substituted ''(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions'' for ''(1) The Secretary shall prescribe proposed regulations to amend those provisions of the Department of Defense Supplement to the Federal Acquisition Regulation dealing with the allowability of contractor costs. The amendments'' and ''The regulations'' for ''These regulations''.

Subsec. (f)(1)(Q). Pub. L. 103–355, § 2101(c), added subpar. (Q).

Subsec. (f)(2). Pub. L. 103–355, § 2101(a)(6)(B)(ii), which directed substitution of ''Federal Acquisition Regulation'' for ''regulation'', was executed by making the substitution for ''regulations'' to reflect the probable intent of Congress.

Subsec. (f)(2)(B). Pub. L. 103–355, § 2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(3). Pub. L. 103–355, § 2101(a)(6)(B)(ii), which directed substitution of ''Federal Acquisition Regulation'' for ''regulation'', was executed by making the substitution for ''regulations'' to reflect the probable intent of Congress.

Pub. L. 103–355, § 2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(4). Pub. L. 103–355, § 2101(a)(6)(B)(ii), which directed substitution of ''Federal Acquisition Regulation'' for ''regulation'', was executed by making the substitution for ''regulations'' to reflect the probable intent of Congress.

Pub. L. 103–355, § 2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (g). Pub. L. 103–355, § 2101(a)(7), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The regulations of the Secretary required to be prescribed under subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.''

Subsec. (h). Pub. L. 103–355, § 2101(a)(8), inserted heading and substituted ''in the Federal Acquisition Regulation'' for ''by the Secretary'' in par. (1) and ''head of the agency'' for ''Secretary of Defense'' in introductory provisions of par. (2).

Subsec. (i). Pub. L. 103–355, § 2101(a)(9), inserted heading and substituted ''The submission to an agency'' for ''The submission to the Department of Defense''.

Subsec. (j). Pub. L. 103–355, § 2101(a)(10), inserted heading and substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (k). Pub. L. 103–355, § 2101(a)(11)(A), inserted heading.

Subsec. (k)(2)(D). Pub. L. 103–355, § 2101(a)(11)(B), struck out ''by the Department of Defense'' after ''decision'' in introductory provisions.

Subsec. (k)(4). Pub. L. 103–355, § 2101(a)(11)(C), inserted ''or Secretary of the military department concerned'' after ''head of the agency'', ''or Secretary'' after ''agency head'', and ''or military department'' before period at end and substituted ''in accordance with the Federal Acquisition Regulation'' for ''under regulations prescribed by such agency head''.

Subsec. (*l*). Pub. L. 103–355, § 2101(d), added subsec. (*l*) and struck out former subsec. (*l*) which related to periodic evaluation by Comptroller General of implementation of this section by Secretary of Defense.

Subsec. (m). Pub. L. 103–355, § 2101(d), struck out subsec. (m) which read as follows: ''In this section, the term 'covered contract' means a contract for an amount more than $100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.''

1992—Subsec. (a). Pub. L. 102–484, § 818(a)(1)(A), redesignated subsec. (a)(1) as entire subsection. Former subsec. (a)(2) redesignated subsec. (b)(1).

Subsec. (b)(1). Pub. L. 102–484, § 818(a)(1)(B), redesignated subsec. (a)(2) as subsec. (b)(1), in introductory provisions struck out ''by clear and convincing evidence'' after ''Secretary determines'' and substituted ''expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs'' for ''unallowable under paragraph (1)'', and in subpar. (A), substituted ''cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''costs''. Former subsec. (b) redesignated subsec. (b)(2).

Subsec. (b)(2). Pub. L. 102–484, § 818(a)(2), redesignated subsec. (b) as subsec. (b)(2), struck out '', in addition to the penalty assessed under subsection (a),'' after ''against the contractor'', and substituted ''the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''the amount of such cost''.

Subsec. (c). Pub. L. 102–484, § 818(a)(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–484, § 818(a)(3), (4), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows: ''If any penalty is assessed under subsection (a) or (b) with respect to a proposal for settlement of indirect costs, the Secretary may assess an additional penalty of not more than $10,000 per proposal.''

Subsec. (e)(3), (4). Pub. L. 102–484, § 1352(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f)(5). Pub. L. 102–484, § 1052(26)(A), struck out par. (5) which read as follows: ''The regulations shall provide that costs to promote the export of products of the United States defense industry, including costs of exhibiting or demonstrating products, shall be allowable to the extent that such costs—

''(A) are allocable, reasonable, and not otherwise unallowable;

''(B) with respect to the activities of the business segment to which such costs are being allocated, are determined by the Secretary of Defense to be likely to result in future cost advantages to the United States; and

''(C) with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, are not in excess of the amount equal to 110 percent of such costs incurred by such business segment in the previous fiscal year.''

Subsec. (*l*)(2). Pub. L. 102–484, § 1052(26)(B)(i), substituted ''paragraph (3)'' for ''subsection (e)(2)(C)''.

Subsec. (*l*)(3). Pub. L. 102–484, § 1052(26)(B)(ii), added par. (3).

1991—Subsec. (e)(2), (3). Pub. L. 102–190 added par. (2) and redesignated former par. (2) as (3).

1990—Subsec. (e)(2). Pub. L. 101–510 struck out ''(A)'' before ''The Secretary'' and struck out subpars. (B) and (C) which read as follows:

''(B) The Secretary shall submit to the committees named in subparagraph (C) any proposed regulations that would make substantive changes to regulations prescribed under the second sentence of subparagraph (A) before the publication of such proposed regulations in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

''(C) The committees named in this subparagraph are—

''(i) the Committees on Armed Services and on Government Operations of the House of Representatives; and

''(ii) the Committees on Armed Services and on Governmental Affairs of the Senate.''

1989—Subsec. (e)(1)(N), (O). Pub. L. 101–189, § 311(a)(1), added subpar. (N) and redesignated former subpar. (N) as (O).

Subsec. (k)(5)(B)(i). Pub. L. 101–189, § 853(b)(3), substituted ''the Federal Acquisition Regulation'' for ''the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A))''.

Subsec. (k)(6). Pub. L. 101–189, § 853(a)(1)(A), designated par. (2) of subsec. (*l*), set out first, as subsec. (k)(6) and substituted ''In this subsection:'' for ''In subsection (k):'' in introductory provisions.

Subsec. (*l*). Pub. L. 101–189, § 853(a)(1)(A), (C), restored the text of subsec. (k) as in effect prior to being struck out by Pub. L. 100–700, § 8(b)(2) (see 1988 Amendment note below), designated such text as subsec. (*l*), and struck out former subsec. (*l*)(1), set out first, which defined ''covered contract''. Former subsec. (*l*)(2), set out first, was redesignated subsec. (k)(6). Former subsec. (*l*), set out second, was redesignated (m).

Subsec. (m). Pub. L. 101–189, § 853(a)(1)(B), redesignated subsec. (*l*), set out second, as (m).

1988—Subsec. (e)(1)(L). Pub. L. 100–370, § 1(f)(2)(A), added subpar. (L).

Subsec. (e)(1)(M). Pub. L. 100–456, § 322(a), added subpar. (M).

Subsec. (e)(1)(N). Pub. L. 100–700, § 8(b)(1)(A), which directed amendment of subsec. (e) by striking out subpar. (N) and inserting in lieu thereof a new subpar. (N), was executed to subsec. (e)(1)(N) of this section as the probable intent of Congress. Former subpar. (N) read as follows: ''Except as provided in paragraph (2), costs incurred in connection with any civil, criminal, or administrative action brought by the United States that results in a determination that a contractor has violated or failed to comply with any Federal law or regulation if the action results in any of the following:

''(i) In the case of a criminal action, a conviction (including a conviction pursuant to a plea of nolo contendere).

''(ii) In the case of a civil or administrative action, (I) a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful, and (II) the imposition of a monetary penalty.

''(iii) A final decision by an appropriate official of the Department of Defense to debar or suspend the contractor or to rescind, void, or terminate a contract awarded to such contractor if such decision is based on a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful.''

Pub. L. 100–456, § 832(a)(1), added subpar. (N).

Subsec. (e)(2), (3). Pub. L. 100–700, § 8(b)(1)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If a civil, criminal, or administrative action referred to in paragraph (1)(N) is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the contractor's costs that are otherwise not allowable under paragraph (1)(N) may be allowed to the extent provided in such agreement.''

Pub. L. 100–456, § 832(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(5). Pub. L. 100–463, § 8105(a), and Pub. L. 100–456, § 826(a), amended section identically, temporarily adding par. (5). Pub. L. 100–526 provided that Pub. L. 100–463, § 8105, and amendment made by that section shall cease to be effective. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (j). Pub. L. 100–370, § 1(f)(3)(A)(ii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 100–700, § 8(b)(2), added subsec. (k), and struck out former subsec. (k), the text of which was restored and redesignated subsec. (*l*) by Pub. L. 101–189, § 853(a)(1)(C). See 1989 Amendment note above.

Pub. L. 100–370, § 1(f)(3)(A)(i), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 100–700, § 8(b)(2), added subsec. (*l*) defining terms ''covered contract'', ''proceeding'', ''costs'', and ''penalty''.

Pub. L. 100–370, § 1(f)(3)(A)(i), redesignated subsec. (k) as (*l*).

1987—Subsec. (e)(1)(K). Pub. L. 100–180 added subpar. (K).

Subsec. (k). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1985—Subsec. (e)(2). Pub. L. 99–190, § 101(b) [§ 8112(a)(1)], designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (h)(2). Pub. L. 99–190, § 101(b) [§ 8112(a)(2)], inserted '', in an exceptional case,'' in provisions preceding subpar. (A).

Subsecs. (j), (k). Pub. L. 99–190, § 101(b) [§ 8112(a)(3)], added subsec. (j) and redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Section 818(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply, as provided in regulations prescribed by the Secretary of Defense, with respect to proposals for settlement of indirect costs for which the Federal Government has not formally initiated an audit before that date.''

Section 1352(c) of Pub. L. 102–484 provided that: ''The amendments made by subsection (b) [amending this section] apply to covered contracts (as defined in section 2324 of title 10, United States Code) that are in effect or are entered into on or after October 1, 1991, for costs incurred on or after October 1, 1991.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 346(b) of Pub. L. 102–190 provided that: ''The amendments made by subsection (a) [amending this section] shall not apply with respect to a foreign national whose employment under a military banking contract (defined in section 2324(e)(2)(B) of title 10, United States Code, as added by subsection (a)) was terminated before the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 311(a)(2) of Pub. L. 101–189 provided that: ''Subparagraph (N) of such subsection [10 U.S.C. 2324(e)(1)(N)], as added by paragraph (1), shall not apply with respect to the termination of the employment of a foreign national employed under any covered contract (as defined in subsection (*l*) of such section [10 U.S.C. 2324(*l*)]) if such termination is the result of the

closing of, or the curtailment of activities at, a United States military facility in a foreign country pursuant to an agreement entered into with the government of that country before the date of the enactment of this Act [Nov. 29, 1989].''

Section 853(a)(3) of Pub. L. 101–189 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as of November 19, 1988.''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Section 8(e) of Pub. L. 100–700 provided that: ''The amendments made by subsections (a) and (b) [enacting section 256 of Title 41, Public Contracts, and amending this section] shall take effect with respect to contracts awarded after the date of the enactment of this Act [Nov. 19, 1988].''

Section 8105(d) of Pub. L. 100–463 provided that subsec. (f)(5) of this section, as enacted by section 8105(a) of Pub. L. 100–463, would cease to be effective three years after Oct. 1, 1988. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Section 322(b) of Pub. L. 100–456 provided that: ''Subparagraph (M) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Sept. 29, 1988].''

Section 826(d) of Pub. L. 100–456, as amended by Pub. L. 100–526, title I, §106(a)(1)(B), Oct. 24, 1988, 102 Stat. 2625, provided that: ''Section 2324(f)(5) of title 10, United States Code (as added by subsection (a)), shall cease to be effective on September 30, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 805(b) of Pub. L. 100–180 provided that: ''Subparagraph (K) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply to any contract entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE

Section 911(c) of Pub. L. 99–145 provided that: ''Section 2324 of title 10, United States Code, as added by subsection (a), shall apply only to contracts for which solicitations are issued on or after the date on which such regulations are prescribed.''

REGULATIONS

Section 2101(e) of Pub. L. 103–355 provided that: ''The regulations of the Secretary of Defense implementing section 2324 of title 10, United States Code, shall remain in effect until the Federal Acquisition Regulation is revised to implement the amendments made by this section [amending this section].''

Section 8(d) of Pub. L. 100–700 provided that: ''The regulations necessary for the implementation of section 306(e) of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 256(e)] (as added by subsection (a)) and section 2324(k)(5) of title 10, United States Code (as added by subsection (b))—

''(1) shall be prescribed not later than 120 days after the date of the enactment of this Act [Nov. 19, 1988]; and

''(2) shall apply to contracts entered into more than 30 days after the date on which such regulations are issued.''

Section 8105(b), (c) of Pub. L. 100–463 provided for the promulgation of regulations and the preparation of a report in connection with the operation of subsec. (f)(5), as enacted by section 8105(a) of Pub. L. 100–463. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Section 826(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense shall prescribe final regulations under paragraph (5) of section 2324(f) of title 10, United States Code (as added by subsection (a)), not later than 90 days after the date of the enactment of this Act [Sept. 29, 1988]. Such regulations shall apply with respect to costs referred to in such paragraph that are incurred by a Department of Defense contractor (or a subcontractor of such a contractor) on or after the first day of the contractor's (or subcontractor's) first fiscal year that begins on or after the date on which such final regulations are prescribed.''

Section 832(b) of Pub. L. 100–456 related to regulations for the implementation of subsec. (e)(1)(N) of this section, prior to repeal by Pub. L. 100–700, §8(c), Nov. 19, 1988, 102 Stat. 4638.

Section 101(b) [title VIII, §8112(b), (c)] of Pub. L. 99–190 required the regulations required under section 911(b) of Pub. L. 99–145, set out below, to be submitted to Congress before the publication of such regulations in accordance with 41 U.S.C. 418b and directed the Comptroller General, within 180 days of publication of the regulations, to submit to Congress a report on the Comptroller General's initial evaluation under subsection (j)(1) of this section.

Section 911(b) of Pub. L. 99–145 provided that:

''(1) Not later than 150 days after the date of the enactment of this Act [Nov. 8, 1985], the Secretary of Defense shall prescribe the regulations required by subsections (e) and (f) of section 2324 of title 10, United States Code, as added by subsection (a). Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

''(2) The Secretary shall review such regulations at least once every five years. The results of each such review shall be made public.''

PAYMENT OF RESTRUCTURING COSTS UNDER DEFENSE CONTRACTS

Pub. L. 103–337, div. A, title VIII, §818, Oct. 5, 1994, 108 Stat. 2821, provided that:

''(a) CERTIFICATION OF COST SAVINGS.—(1) The Secretary of Defense may not, under section 2324 of title 10, United States Code, pay restructuring costs associated with a business combination undertaken by a defense contractor until the Department of Defense reviews the projected costs and savings that will result for the Department from such business combination and an official of the Department of Defense at the level of Assistant Secretary of Defense or above certifies in writing that projections of future cost savings resulting for the Department from the business combination are based on audited cost data and should result in overall reduced costs to the Department.

''(2) The requirements for a review and certification under paragraph (1) shall not apply with respect to any business combination for which restructuring costs were paid or otherwise approved by the Secretary before August 15, 1994.

''(b) REQUIREMENT FOR REGULATIONS.—Not later than January 1, 1995, the Secretary of Defense shall prescribe regulations on the allowability of restructuring costs associated with business combinations under defense contracts.

''(c) MATTERS TO BE INCLUDED.—At a minimum, the regulations shall—

''(1) include a definition of the term 'restructuring costs'; and

''(2) address the issue of contract novations under such contracts.

''(d) CONSULTATION.—In developing the regulations, the Secretary of Defense shall consult with the Administrator for Federal Procurement Policy.

''(e) REPORT.—Not later than November 13 in each of the years 1995, 1996, and 1997, the Secretary of Defense shall submit to Congress a report on the following:

''(1) A description of the procedures being followed within the Department of Defense for evaluating projected costs and savings under a defense contract resulting from a restructuring of a defense contractor associated with a business combination.

''(2) A list of all defense contractors for which restructuring costs have been allowed by the Department, along with the identities of the firms which those contractors have acquired or with which those contractors have combined since July 21, 1993, that qualify the contractors for such restructuring reimbursement.

''(3) The Department's experience with business combinations for which the Department has agreed to allow restructuring costs since July 21, 1993, including the following:

''(A) The estimated amount of costs associated with each restructuring that have been or will be treated as allowable costs under defense contracts, including the type and amounts of costs that would not have arisen absent the business combination.

''(B) The estimated amount of savings associated with each restructuring that are expected to be achieved on defense contracts.

''(C) The types of documentation relied on to establish that savings associated with each restructuring will exceed costs associated with the restructuring.

''(D) Actual experience on whether savings associated with each restructuring are exceeding costs associated with the restructuring.

''(E) Identification of any programmatic or budgetary disruption in the Department of Defense resulting from contractor restructuring.

''(f) DEFINITION.—In this section, the term 'business combination' includes a merger or acquisition.

''(g) COMPTROLLER GENERAL REPORTS.—(1) Not later than March 1, 1995, the Comptroller General shall submit to Congress a report on the adequacy of the regulations prescribed under subsection (b) with respect to—

''(A) whether such regulations are consistent with the purposes of this section, other applicable law, and the Federal Acquisition Regulation; and

''(B) whether such regulations establish policies, procedures, and standards to ensure that restructuring costs are paid only when in the best interests of the United States.

''(2) The Comptroller General shall report periodically to Congress on the implementation of the policy of the Department of Defense regarding defense industry restructuring.

''(3) Not later than December 1, 1997, the Comptroller General shall submit to Congress a final report on the policy of the Department of Defense on defense industry restructuring, including any recommendations the Comptroller considers appropriate.''

REIMBURSEMENT OF INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION UNDER DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 103–160, div. A, title VIII, § 841, Nov. 30, 1993, 107 Stat. 1719, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

''(b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in subsection (a) in the case of a particular institution of higher education if the governing body of the institution requests the waiver in order to simplify the overall management by that institution of cost reimbursements by the Department of Defense for contracts awarded by the Department to the institution.

''(c) DEFINITIONS.—In this section:

''(1) The term 'allowable indirect costs' means costs that are generally considered allowable as indirect costs under regulations that establish the cost reimbursement principles applicable to an institution of higher education for purposes of Department of Defense contracts.

''(2) The term 'institution of higher education' has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).''

ASSESSMENT OF REGULATIONS RELATING TO ALLOWABILITY OF COSTS TO PROMOTE EXPORT OF DEFENSE PRODUCTS; REPORT TO CONGRESS

Section 826(c) of Pub. L. 100–456, as amended by Pub. L. 100–526, title I, § 106(a)(1)(A), Oct. 24, 1988, 102 Stat. 2625, directed Comptroller General of United States and Inspector General of Department of Defense, not later than 2 years after Sept. 29, 1988, to submit to Congress a report including an assessment of whether the regulations required by subsec. (f)(5) of this section provide the appropriate incentives to stimulate exports by the United States defense industry and provide cost savings to the United States and whether such regulations provide appropriate criteria to ensure that costs allowed are reasonably likely to provide future cost savings to the United States.

AIR TRAVEL EXPENSES OF DEFENSE CONTRACTOR PERSONNEL

Section 833 of Pub. L. 100–456, as amended by Pub. L. 101–189, div. A, title VIII, § 853(a)(2), Nov. 29, 1989, 103 Stat. 1518, provided that:

''(a) AIR FARE DISCOUNT AGREEMENTS.—The Administrator of General Services shall enter into negotiations with commercial air carriers with a view to achieving agreements that permit personnel of contractors who are traveling solely in the performance of covered contracts to be transported by such carriers at the same discount air passenger transportation rates as such carriers charge for travel by Federal Government employees traveling at Government expense.

''(b) ALLOWABLE COSTS.—Not later than 120 days after the first agreement goes into effect between the Administrator of General Services and a commercial air carrier under subsection (a), the Secretary of Defense shall prescribe regulations that provide that costs for travel by commercial air carrier by an employee of a defense contractor that exceed the air passenger transportation rates established under the agreement are not allowable costs under section 2324 of title 10, United States Code, under a covered contract if—

''(1) the rate was available; and

''(2) travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate.

''(c) COVERED CONTRACT.—In this section, the term 'covered contract' has the meaning given such term by section 2324(m) of title 10, United States Code.

''(d) EXPIRATION.—This section shall cease to be effective three years after the date of the enactment of this Act [Sept. 29, 1988].''

BURDEN OF PROOF IN GOVERNMENT CONTRACT DISPUTE RESOLUTION

Section 933 of Pub. L. 99–145, which provided that in proceeding before the Armed Services Board of Contract Appeals, United States Claims Court, or any other Federal court in which reasonableness of indirect costs for which a contractor seeks reimbursement from Department of Defense is in issue, the burden of proof is upon the contractor to establish that such costs are reasonable, was repealed and restated in subsec. (j) of this section by Pub. L. 100–370, § 1(f)(3)(A)(ii), (B), July 19, 1988, 102 Stat. 846.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2372 of this title.

[§ 2325. Repealed. Pub. L. 103–355, title VIII, § 8104(b)(1), Oct. 13, 1994, 108 Stat. 3391]

Section, added Pub. L. 99–500, § 101(c) [title X, § 907(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–137, and

Pub. L. 99–591, § 101(c) [title X, § 907(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, § 907(a)(1), Nov. 14, 1986, 100 Stat. 3917, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(5), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title VIII, § 810, Nov. 5, 1990, 104 Stat. 1595; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, directed Secretary of Defense to ensure that requirements of Department of Defense with respect to procurement of supplies be stated in terms of functions to be performed, performance required, or essential physical characteristics, and related to preference for nondevelopmental items in procurement of supplies. See sections 2376 and 2377 of this title.

A prior section 2325 was renumbered section 2345 of this title.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2326. Undefinitized contractual actions: restrictions

(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(b) LIMITATIONS ON OBLIGATION OF FUNDS.—(1) A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.

(5) This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(f) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) DEFINITIONS.—In this section:

(1) The term ''undefinitized contractual action'' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include contractual actions with respect to the following:

(A) Foreign military sales.

(B) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(C) Special access programs.

(D) Congressionally mandated long-lead procurement contracts.

(2) The term ''qualifying proposal'' means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

(Added Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–140, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–140; Pub. L. 99–661, div. A, title IX, formerly

title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–25, title VII, § 701(d)(5), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, § 1505, Oct. 13, 1994, 108 Stat. 3298.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2326 was renumbered section 2346 of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–355, § 1505(a)(1), struck out ''and expenditure'' after ''obligation'' in heading.

Subsec. (b)(1)(B). Pub. L. 103–355, § 1505(a)(2), struck out ''or expended'' after ''obligated''.

Subsec. (b)(2). Pub. L. 103–355, § 1505(a)(3), substituted ''obligate'' for ''expend''.

Subsec. (b)(3). Pub. L. 103–355, § 1505(a)(4), substituted ''obligated'' for ''expended'' and ''obligate'' for ''expend''.

Subsec. (b)(4), (5). Pub. L. 103–355, § 1505(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (g)(1)(B). Pub. L. 103–355, § 1505(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

1991—Subsec. (g)(1)(B). Pub. L. 102–25 substituted ''in an amount not in excess of the amount of the small purchase threshold'' for ''of less than $25,000''.

1989—Subsec. (g)(1)(D). Pub. L. 101–189 substituted ''Congressionally mandated'' for ''Congressionally-mandated''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 101(c) [title X, § 908(d)(2)] of Pub. L. 99–500 and Pub. L. 99–591, and section 908(d)(2) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2326 of title 10, United States Code (as added by subsection (d)(1)), applies to undefinitized contractual actions that are entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS; OVERSIGHT BY INSPECTOR GENERAL; WAIVER AUTHORITY

Section 101(c) [title X, § 908(a)–(c), (e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 908(a)–(c), (e) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX and amended by Pub. L. 100–26, §§ 3(5), 5(2), Apr. 21, 1987, 101 Stat. 273, 274, provided that:

''(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—(1) On the last day of each six-month period described in paragraph (4), the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretary of each military department shall determine—

''(A) the total amount of funds obligated for contractual actions during the six-month period;

''(B) the total amount of funds obligated during the six-month period for undefinitized contractual actions; and

''(C) the total amount of funds obligated during the six-month period for undefinitized contractual actions that are not definitized on or before the last day of such period.

''(2) On the last day of each six-month period described in paragraph (4), the amount of funds obligated for undefinitized contractual actions entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the six-month period that are not definitized on or before such day may not exceed 10 percent of the amount of funds obligated for all contractual actions entered into by the Secretary during the six-month period.

''(3) If on the last day of a six-month period described in paragraph (4) the total amount of funds obligated for undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the six-month period exceeds the limit established in paragraph (2), the Secretary—

''(A) shall, not later than the end of the 45-day period beginning on the first day following the six-month period, submit to the defense committees an unclassified report concerning—

''(i) the amount of funds obligated for contractual actions under the jurisdiction of the Secretary that were entered into during the six-month period with respect to which the report is submitted; and

''(ii) the amount of such funds obligated for undefinitized contractual actions; and

''(B) except with respect to the six-month period described in paragraph (4)(A), may not enter into any additional undefinitized contractual actions until the date on which the Secretary certifies to Congress that such limit is not exceeded by the cumulative amount of funds obligated for undefinitized contractual actions under the jurisdiction of the Secretary that are not definitized on or before such date and were entered into—

''(i) during the six-month period for which such limit was exceeded; or

''(ii) after the end of such six-month period.

''(4) This subsection applies to the following six-month periods:

''(A) The period beginning on October 1, 1986, and ending on March 31, 1987.

''(B) The period beginning on April 1, 1987, and ending on September 30, 1987.

''(C) The period beginning on October 1, 1987, and ending on March 31, 1988.

''(D) The period beginning on April 1, 1988, and ending on September 30, 1988.

''(E) The period beginning on October 1, 1988, and ending on March 31, 1989.

''(b) OVERSIGHT BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall—

''(1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and

''(2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

''(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the application of subsections (a) and (b) for urgent and compelling considerations relating to national security or public safety if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] of such waiver before the end of the 30-day period beginning on the date that the waiver is made.

''(e) DEFINITION.—For purposes of this section, the term 'undefinitized contractual action' has the meaning given such term in section 2325(g) of title 10, United States Code (as added by subsection (d)(1)).''

§ 2327. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary after the date on which such head of an agency submits to Congress a report on the contract.

(B) A report under subparagraph (A) shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(C) After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary unless the information required to be included in such report under subparagraph (B) has materially changed since the submission of the previous report.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than $100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(e) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term ''significant interest''.

(Added Pub. L. 99–500, § 101(c) [title X, § 951(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–164, and Pub. L. 99–591, § 101(c) [title X, § 951(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, § 951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title XII, § 1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–224, § 5(b)(2), Dec. 30, 1987, 101 Stat. 1538.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2327 was renumbered section 2347 of this title.

AMENDMENTS

1987—Subsecs. (a), (b)(2). Pub. L. 100–224 substituted ''50 U.S.C. App.'' for ''50 U.S.C.'' in parenthetical after ''Export Administration Act of 1979''.

Subsec. (d)(1). Pub. L. 100–180 inserted par. (1) designation.

EFFECTIVE DATE

Section 101(c) [title X, § 951(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 951(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2327 of title 10, United States Code (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

REPORTS BY DEFENSE CONTRACTORS OF DEALINGS WITH TERRORIST COUNTRIES

Pub. L. 103–160, div. A, title VIII, § 843, Nov. 30, 1993, 107 Stat. 1720, as amended by Pub. L. 103–355, title VIII, § 8105(j), Oct. 13, 1994, 108 Stat. 3393, provided that:

''(a) REPORT REQUIREMENT.—(1) Whenever the Secretary of Defense proposes to enter into a contract with

any person for an amount in excess of $5,000,000 for the provision of goods or services to the Department of Defense, the Secretary shall require that person—

''(A) before entering into the contract, to report to the Secretary each commercial transaction which that person has conducted with the government of any terrorist country during the preceding three years or the period since the effective date of this section, whichever is shorter; and

''(B) to report to the Secretary each such commercial transaction which that person conducts during the course of the contract (but not after the date specified in subsection (h)) with the government of any terrorist country.

''(2) The requirement contained in paragraph (1)(B) shall be included in the contract with the Department of Defense.

''(3) This section does not apply with respect to a contract for the procurement of a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

''(b) REGULATIONS.—The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this section.

''(c) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense shall submit to the Congress each year by December 1 a report setting forth those persons conducting commercial transactions with terrorist countries that are included in the reports made pursuant to subsection (a) during the preceding fiscal year, the terrorist countries with which those transactions were conducted, and the nature of those transactions. The version of the report made available for public release shall exclude information exempt from public disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

''(d) LIABILITY.—This section shall not be interpreted as imposing any liability on a person for failure to comply with the reporting requirement of subsection (a) if the failure to comply is caused solely by an act or omission of a third party.

''(e) PERSON DEFINED.—For purposes of this section, the term 'person' means a corporate or other business entity proposing to enter or entering into a contract covered by this section. The term does not include an affiliate or subsidiary of the entity.

''(f) TERRORIST COUNTRY DEFINED.—A country shall be considered to be a terrorist country for purposes of a contract covered by this section if the Secretary of State has determined pursuant to law, as of the date that is 60 days before the date on which the contract is signed, that the government of that country is a government that has repeatedly provided support for acts of international terrorism.

''(g) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993], or after the expiration of the 30-day period beginning on the date of publication in the Federal Register of the final regulations referred to in subsection (b), whichever is earlier.

''(h) TERMINATION.—This section expires on September 30, 1996.''

§ 2328. Release of technical data under Freedom of Information Act: recovery of costs

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99–500, § 101(c) [title X, § 954(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 954(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2328 was renumbered section 2348 of this title.

AMENDMENTS

1987—Pub. L. 100–26, § 7(a)(7)(B)(i), substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in section catchline.

Subsec. (a)(1). Pub. L. 100–26, § 7(a)(7)(A)(i)(I), substituted ''such technical data to the person requesting the'' for ''technical data to a person requesting such a''.

Pub. L. 100–26, § 7(a)(7)(A)(i)(II), substituted ''search, duplication, and review'' for ''search and duplication''.

Subsec. (b). Pub. L. 100–26, § 7(a)(7)(A)(ii), substituted ''Crediting of receipts'' for ''Disposition of costs'' in heading.

Subsec. (c)(3). Pub. L. 100–26, § 7(a)(7)(A)(iii), substituted ''section 552(a)(4)(A)(iii)'' for ''section 552(a)(4)(A)''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(d)(2) of Pub. L. 100–26 provided that: ''The amendment to section 2328 of such title made by section 7(a)(7)(A)(i)(II) shall take effect on the same date and in the same manner as provided in section 1804(b) of Public Law 99–570 [set out as an Effective Date of 1986 Amendment note under section 552 of Title 5, Government Organization and Employees] for the amendment made by section 1803 of that Public Law to section 552a of title 5, United States Code [probably means amendment by section 1803 of Pub. L. 99–570 to section 552(a) of Title 5].''

EFFECTIVE DATE

Section 101(c) [title X, §954(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 954(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX by Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [enacting this section] shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

[§2329. Repealed. Pub. L. 103–355, title I, §1506(a), Oct. 13, 1994, 108 Stat. 3298]

Section, added Pub. L. 100–180, div. A, title VIII, §810(a)(1), Dec. 4, 1987, 101 Stat. 1130; amended Pub. L. 100–456, div. A, title XII, §1233(j), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to contract terms and conditions for production special tooling and production special test equipment.

[§2330. Repealed. Pub. L. 102–484, div. D, title XLII, §4271(a)(1), Oct. 23, 1992, 106 Stat. 2695]

Section, added Pub. L. 100–456, div. A, title VIII, §801(a)(1), Sept. 29, 1988, 102 Stat. 2007; amended Pub. L. 101–510, div. A, title XIV, §1484(h)(2), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 102–190, div. A, title VIII, §802(d), Dec. 5, 1991, 105 Stat. 1414, related to integrated financing policy.

A prior section 2330 was renumbered section 2349 of this title.

§2331. Contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101–510, div. A, title VIII, §834(a)(1), Nov. 5, 1990, 104 Stat. 1613; amended Pub. L. 102–25, title VII, §701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103–355, title I, §1004(c), Oct. 13, 1994, 108 Stat. 3253.)

PRIOR PROVISIONS

A prior section 2331 was renumbered section 2350 of this title.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–355 struck out text and heading of subsec. (c). Text read as follows:

''(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

''(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

''(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register.''

1991—Subsec. (c)(1). Pub. L. 102–25 struck out ''on a case-by-case basis'' after ''value of task orders'', substituted ''considers the use of master agreements necessary'' for ''considers necessary the use of master agreements'', and struck out ''of this section'' before period at end.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

REGULATIONS

Section 834(b) of Pub. L. 101–510 provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act.''

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Repeal of subsec. (c) of this section by Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under section 759 of Title 40, Public Buildings, Property, and Works, or subchapter VI (§541 et seq.) of chapter 10 of Title 40, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

Subchapter		Sec.
I.	Acquisition and Cross-Servicing Agreements	2341
II.	Other Cooperative Agreements	2350a

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted ''Sec.'' above ''2341''.

1989—Pub. L. 101–189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted ''COOPERATIVE

AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

1987—Pub. L. 100–26, § 7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS'' in chapter heading.

PRIOR PROVISIONS

Chapter 138 was originally comprised of sections 2321 to 2331. Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99–145, title XIII, § 1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, which required the Secretary of Defense to prescribe regulations to implement this chapter, was repealed by Pub. L. 99–145, title XIII, § 1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec.
2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States.
2342. Cross-servicing agreements.
2343. Waiver of applicability of certain laws.
2344. Methods of payment for acquisitions and transfers by the United States.
2345. Liquidation of accrued credits and liabilities.
2346. Crediting of receipts.
2347. Limitation on amounts that may be obligated or accrued by the United States.
2348. Inventories of supplies not to be increased.
2349. Overseas Workload Program.
2349a. Annual report on non-NATO agreements.
2350. Definitions.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XIII, § 1317(c)(2)(B), (i)(2), Oct. 5, 1994, 108 Stat. 2900, 2902, substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' in item 2343 and added item 2349a.

1993—Pub. L. 103–160, div. A, title XIV, § 1431(a)(2), Nov. 30, 1993, 107 Stat. 1833, added item 2349.

1990—Pub. L. 101–510, div. A, title XIII, § 1331(3), Nov. 5, 1990, 104 Stat. 1673, struck out item 2349 ''Annual reports''.

1989—Pub. L. 101–189, div. A, title IX, § 931(a)(1), Nov. 29, 1989, 103 Stat. 1531, added subchapter heading.

1986—Pub. L. 99–661, div. A, title XI, § 1104(g), Nov. 14, 1986, 100 Stat. 3965, substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in item 2341.

1985—Pub. L. 99–145, title XIII, § 1304(a)(6), Nov. 8, 1985, 99 Stat. 742, renumbered items 2321 to 2328 as 2341 to 2348, respectively, and items 2330 and 2331 as 2349 and 2350, respectively, and struck out item 2329 ''Regulations''.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2350c, 2350d of this title.

§ 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States

Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may—

(1) acquire from the Governments of North Atlantic Treaty Organization countries, from North Atlantic Treaty Organization subsidiary bodies, and from the United Nations Organization or any regional international organization of which the United States is a member logistic support, supplies, and services for elements of the armed forces deployed outside the United States; and

(2) acquire from any government not a member of the North Atlantic Treaty Organization logistic support, supplies, and services for elements of the armed forces deployed (or to be deployed) outside the United States if that country—

(A) has a defense alliance with the United States;

(B) permits the stationing of members of the armed forces in such country or the homeporting of naval vessels of the United States in such country;

(C) has agreed to preposition materiel of the United States in such country; or

(D) serves as the host country to military exercises which include elements of the armed forces or permits other military operations by the armed forces in such country.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2321; renumbered § 2341 and amended Pub. L. 99–145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 102–484, div. A, title XIII, § 1312(a), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–337, div. A, title XIII, § 1317(a), Oct. 5, 1994, 108 Stat. 2899.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–337 substituted a comma for ''and'' after ''countries'' and inserted '', and from the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1992—Par. (1). Pub. L. 102–484, § 1312(a)(1), substituted ''outside the United States'' for ''in Europe and adjacent waters''.

Par. (2). Pub. L. 102–484, § 1312(a)(2), in introductory provisions, struck out ''in which elements of the armed forces are deployed (or are to be deployed)'' after ''North Atlantic Treaty Organization'' and substituted ''outside the United States'' for ''in such country or in the military region in which such country is located''.

1986—Pub. L. 99–661 substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in section catchline.

Pub. L. 99–661 amended section generally, restating existing provisions into introductory text and par. (1) and adding par. (2).

1985—Pub. L. 99–145 renumbered section 2321 of this title as this section and substituted ''section 2343'' for ''section 2323''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1317(j) of Pub. L. 103–337 provided that: ''The amendments made by this section [enacting section 2349a of this title and amending this section and sections 2342 to 2347 and 2350 of this title] shall apply with regard to any acquisition or transfer of logistic support, supplies, and services under the authority of subchapter I of chapter 138 of title 10, United States Code, that is initiated after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1312(c) of Pub. L. 102–484 provided that: ''The amendments made by this section [amending this sec-

tion and section 2347 of this title] shall take effect on the date of enactment of this Act [Oct. 23, 1992] and shall apply to acquisitions of logistics support, supplies, and services under chapter 138 of title 10, United States Code, that are initiated on or after the date of enactment of this Act.''

SHORT TITLE

Section 1 of Pub. L. 96–323 provided: ''That this Act [enacting this chapter] may be cited as the 'North Atlantic Treaty Organization Mutual Support Act of 1979'.''

ACCEPTANCE OF REAL PROPERTY, SERVICES, AND COMMODITIES FROM FOREIGN COUNTRIES BY AGENCIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–165, title IX, §9008, Nov. 21, 1989, 103 Stat. 1130, which authorized agencies of Department of Defense to accept use of real property from foreign countries for United States in accordance with mutual defense agreements or occupational arrangements and to accept services furnished by foreign countries as reciprocal international courtesies or as services customarily made available without charge and to use same for support of United States forces in such areas without specific appropriation therefor, was repealed and restated in section 2350g of this title by Pub. L. 101–510, div. A, title XIV, §1451(b)(1), (c), Nov. 5, 1990, 104 Stat. 1692, 1693.

OVERSEAS WORKLOAD PROGRAM

Pub. L. 101–510, div. A, title XIV, §1465, Nov. 5, 1990, 104 Stat. 1700, as amended by Pub. L. 102–190, div. A, title X, §1085, Dec. 5, 1991, 105 Stat. 1483; Pub. L. 102–484, div. A, title XIII, §1353, Oct. 23, 1992, 106 Stat. 2559, which related to eligibility of a firm of any member nation of North Atlantic Treaty Organization (NATO) or of any major non-NATO ally to bid on any contract for maintenance, repair, or overhaul of equipment of the Department of Defense to be awarded under competitive procedures as part of the Overseas Workload Program, was repealed and restated in section 2349 of this title by Pub. L. 103–160, div. A, title XIV, §1431(a)(1), (b)(1), Nov. 30, 1993, 107 Stat. 1832, 1833.

Similar provisions were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, §9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, §1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, §8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, §8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, §1021, Dec. 4, 1987, 101 Stat. 1143.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§2342. Cross-servicing agreements

(a)(1) Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into an agreement described in paragraph (2) with any of the following:

(A) The government of a North Atlantic Treaty Organization country.

(B) A subsidiary body of the North Atlantic Treaty Organization.

(C) The United Nations Organization or any regional international organization of which the United States is a member.

(D) The government of a country not a member of the North Atlantic Treaty Organization but which is designated by the Secretary of Defense, subject to the limitations prescribed in subsection (b), as a government with which the Secretary may enter into agreements under this section.

(2) An agreement referred to in paragraph (1) is an agreement under which the United States agrees to provide logistic support, supplies, and services to military forces of a country or organization referred to in paragraph (1) in return for the reciprocal provisions of logistic support, supplies, and services by such government or organization to elements of the armed forces.

(b) The Secretary of Defense may not designate a country for an agreement under this section—

(1) unless the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

(2) in the case of a country which is not a member of the North Atlantic Treaty Organization, notifies the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives at least 30 days before the date on which such country is designated by the Secretary under subsection (a).

(c) The Secretary of Defense may not use the authority of this subchapter to procure from any foreign government or international organization any goods or services reasonably available from United States commercial sources.

(d) The Secretary shall prescribe regulations to ensure that contracts entered into under this subchapter are free from self-dealing, bribery, and conflict of interests.

(Added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1016, §2322; renumbered §2342 and amended Pub. L. 99–145, title XIII, §1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, §1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 100–180, div. A, title XII, §1231(9), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title IX, §931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 101–510, div. A, title XIV, §1451(a), Nov. 5, 1990, 104 Stat. 1692; Pub. L. 103–337, div. A, title XIII, §1317(b), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, §1317(b)(1), substituted ''with any of the following:'' for ''with—'' in introductory provisions, substituted ''The government'' for ''the government'' and a period for the semicolon in subpar. (A), substituted ''A subsidiary'' for ''a subsidiary'' and ''Organization.'' for ''Organization; or'' in subpar. (B), added subpar. (C), redesignated former subpar. (C) as (D) and substituted ''The government'' for ''the government''.

Subsec. (a)(2). Pub. L. 103–337, §1317(b)(2), substituted ''organization'' for ''subsidiary body'' in two places.

Subsec. (c). Pub. L. 103–337, §1317(b)(3), substituted ''or international organization'' for ''as a routine or normal source''.

1990—Subsec. (a). Pub. L. 101–510 amended subsec. (a) generally, revising and restating former pars. (1) to (3) relating to reciprocal logistical support agreements as pars. (1) and (2).

1989—Subsecs. (c), (d). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1987—Pub. L. 100–180 substituted ''Cross-servicing'' for ''Cross servicing'' in section catchline.

1986—Pub. L. 99–661 amended section generally, restating existing provisions in introductory text and par. (1) of subsec. (a), adding pars. (2) and (3) of subsec. (a), and adding subsecs. (b) to (d).

1985—Pub. L. 99–145 renumbered section 2322 of this title as this section and substituted ''section 2343'' for ''section 2323''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2343. Waiver of applicability of certain laws

Sections 2207, 2304(a), 2306(a), 2306(b), 2306(e), 2306a, and 2313 of this title and section 3741 of the Revised Statutes (41 U.S.C. 22) shall not apply to acquisitions made under the authority of section 2341 of this title or to agreements entered into under section 2342 of this title.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323; renumbered § 2343 and amended Pub. L. 99–145, title IX, § 961(b), title XIII, § 1304(a)(1), (5), Nov. 8, 1985, 99 Stat. 703, 741; Pub. L. 100–26, § 7(g)(2), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–456, div. A, title XII, § 1233(d), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–190, div. A, title X, § 1061(a)(12), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–337, div. A, title XIII, § 1317(c)(1), (2)(A), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Pub. L. 103–337, § 1317(c)(2)(A), substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' as section catchline.

Pub. L. 103–337, § 1317(c)(1), designated subsec. (b) as entire section and struck out former subsec. (a) which read as follows: ''Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2341 of this title and agreements entered into under section 2342 of this title shall be made in accordance with chapter 137 of this title and the provisions of this subchapter.''

1991—Subsec. (b). Pub. L. 102–190 substituted ''this title and'' for ''this title,'' and struck out '', and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)'' before ''shall not apply''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1988—Subsec. (b). Pub. L. 100–456 struck out ''section'' before ''2306a''.

1987—Subsec. (b). Pub. L. 100–26 substituted ''section 2306a,'' for ''2306(f),''.

1985—Pub. L. 99–145, § 1304(a)(1), renumbered section 2323 of this title as this section.

Subsec. (a). Pub. L. 99–145, § 1304(a)(5), substituted ''section 2341'' for ''section 2321'' and ''section 2342'' for ''section 2322''.

Subsec. (b). Pub. L. 99–145, § 1304(a)(5), substituted ''section 2341'' for ''section 2321'' and ''section 2342'' for ''section 2322''.

Pub. L. 99–145, § 961(b), substituted ''section 2304(a)'' for ''section 2304(g)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 961(b) of Pub. L. 99–145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98–369, div. B, title VII, making amendment applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 961(e) of Pub. L. 99–145, set out as a note under section 2304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2341, 2342 of this title.

§ 2344. Methods of payment for acquisitions and transfers by the United States

(a) Logistics support, supplies, and services may be acquired or transferred by the United States under the authority of this subchapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an equal value.

(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country or other foreign country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)—

(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces

commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

(B) transfers by the United States to such country under this subchapter of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country or other foreign country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies and the United Nations Organization or any regional international organization of which the United States is a member under this subchapter.

(c) In acquiring or transferring logistics support, supplies, or services under the authority of this subchapter by exchange of supplies or services, the Secretary of Defense may not agree to or carry out the following:

(1) Transfers in exchange for property the acquisition of which by the Department of Defense is prohibited by law.

(2) Transfers of source, byproduct, or special nuclear materials or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(3) Transfers of chemical munitions.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2344, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(b), Nov. 14, 1986, 100 Stat. 3964; Pub. L. 101–189, div. A, title IX, §§ 931(e)(1), 938(a), (b), Nov. 29, 1989, 103 Stat. 1535, 1539; Pub. L. 102–25, title VII, § 701(f)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–337, div. A, title XIII, § 1317(d), Oct. 5, 1994, 108 Stat. 2900.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(2)(B), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (c)(2), is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–337 inserted ''and the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''subchapter'' for ''chapter'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–189, §§ 931(e)(1), 938(a), substituted ''equal value'' for ''identical or substantially identical nature'' and ''this subchapter'' for ''this chapter''.

Subsec. (b)(2)(B), (4). Pub. L. 101–189, § 931(e)(1), substituted ''this subchapter'' for ''this chapter''.

Subsec. (c). Pub. L. 101–189, § 938(b), added subsec. (c).

1986—Subsec. (b)(1), (3). Pub. L. 99–661 inserted ''or other foreign country'' after ''country''.

1985—Pub. L. 99–145 renumbered section 2324 of this title as this section.

1981—Subsec. (b)(2)(B). Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2345. Liquidation of accrued credits and liabilities

(a) Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this subchapter shall be liquidated not less often than once every 12 months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this subchapter shall be satisfied within 12 months after the date of the delivery of the logistic support, supplies, or services.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325; renumbered § 2345, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(c), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(e), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''12 months'' for ''three months''.

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsec. (b).

1985—Pub. L. 99–145 renumbered section 2325 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2346. Crediting of receipts

Any receipt of the United States as a result of an agreement entered into under this subchapter shall be credited, at the option of the Secretary of Defense, to (1) the appropriation,

fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326; renumbered § 2346, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(f), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made'' for ''shall be credited to applicable appropriations, accounts, and funds of the Department of Defense''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1985—Pub. L. 99–145 renumbered section 2326 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2347. Limitation on amounts that may be obligated or accrued by the United States

(a)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $200,000,000 in any fiscal year, and of such amount not more than $50,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants).

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements, may not exceed $60,000,000 in any fiscal year, and of such amount not more than $20,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants). The $60,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(b)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $150,000,000 in any fiscal year.

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements may not exceed $75,000,000 in any fiscal year. Such limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(c) When the armed forces are involved in a contingency operation or in a non-combat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance or in support of peacekeeping operations under chapter VI or VII of the Charter of the United Nations), the restrictions in subsections (a) and (b) are waived for the purposes and duration of that operation.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327; renumbered § 2347, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(d), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–456, div. A, title X, § 1001, Sept. 29, 1988, 102 Stat. 2037; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–484, div. A, title XIII, § 1312(b), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–35, title II, § 202(a)(10), May 31, 1993, 107 Stat. 101; Pub. L. 103–337, div. A, title XIII, § 1317(g), Oct. 5, 1994, 108 Stat. 2901.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 1317(g)(1), substituted ''Organization, subsidiary'' for ''Organization and subsidiary'', inserted '', or from the United Nations Organization or any regional international organization of which the United States is a member'' after ''Treaty Organization'', and substituted ''$200,000,000'' for ''$150,000,000'' and ''$50,000,000'' for ''$25,000,000''.

Subsec. (a)(2). Pub. L. 103–337, § 1317(g)(2), substituted ''$60,000,000'' for ''$10,000,000'' in two places and ''$20,000,000'' for ''$2,500,000''.

Subsec. (b)(1). Pub. L. 103–337, § 1317(g)(3), substituted ''Organization, subsidiary'' for ''Organization and subsidiary'', inserted '', or from the United Nations Organization or any regional international organization of which the United States is a member'' after ''Treaty Organization'', and substituted ''$150,000,000'' for ''$100,000,000''.

Subsec. (b)(2). Pub. L. 103–337, § 1317(g)(4), substituted ''$75,000,000'' for ''$10,000,000''.

Subsec. (c). Pub. L. 103–337, § 1317(g)(5), added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 1312(b)(4)(B). See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, § 1312(b)(1), substituted ''armed forces'' for ''North Atlantic Treaty Organization'' and inserted ''with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization'' after ''(before the computation of offsetting balances)''.

Subsec. (a)(2). Pub. L. 102–484, § 1312(b)(2), substituted ''involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue

under this subchapter (before the computation of offsetting balances) with'' for ''in the military region affecting'' and struck out ''the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with such country'' after ''cross-servicing agreements,''.

Subsec. (b)(1). Pub. L. 102–484, §1312(b)(3), substituted ''armed forces'' for ''North Atlantic Treaty Organization'' and inserted ''with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization'' after ''(before the computation of offsetting balances)''.

Subsec. (b)(2). Pub. L. 102–484, §1312(b)(4)(A), substituted ''involving the armed forces'' for ''in the military region affecting a country referred to in paragraph (1)''.

Pub. L. 102–484, §1312(b)(4)(B), as amended by Pub. L. 103–35, substituted ''(before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements'' for ''from such country (before computation of offsetting balances)''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' wherever appearing.

1988—Subsec. (a)(1). Pub. L. 100–456 substituted ''$150,000,000'' for ''$100,000,000''.

1986—Subsec. (a). Pub. L. 99–661, §1104(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 99–661, §1104(d)(2), designated existing provisions as par. (1) and added par. (2).

1985—Pub. L. 99–145 renumbered section 2327 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable to acquisitions of logistics support, supplies, and services under this chapter that are initiated on or after Oct. 23, 1992, see section 1312(c) of Pub. L. 102–484, set out as a note under section 2341 of this title.

§2348. Inventories of supplies not to be increased

Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this subchapter.

(Added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1018, §2328; amended Pub. L. 97–22, §11(a)(8), July 10, 1981, 95 Stat. 138; renumbered §2348, Pub. L. 99–145, title XIII, §1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, §1104(e), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, §931(e)(1), Nov. 29, 1989, 103 Stat. 1535.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 struck out ''to military forces of any North Atlantic Treaty Organization country or any North Atlantic Treaty Organization subsidiary body'' after ''chapter''.

1985—Pub. L. 99–145 renumbered section 2328 of this title as this section.

1981—Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

§2349. Overseas Workload Program

(a) IN GENERAL.—A firm of any member nation of the North Atlantic Treaty Organization or of any major non-NATO ally shall be eligible to bid on any contract for the maintenance, repair, or overhaul of equipment of the Department of Defense located outside the United States to be awarded under competitive procedures as part of the program of the Department of Defense known as the Overseas Workload Program.

(b) SITE OF PERFORMANCE.—A contract awarded to a firm described in subsection (a) may be performed in the theater in which the equipment is normally located or in the country in which the firm is located.

(c) EXCEPTIONS.—The Secretary of a military department may restrict the geographic region in which a contract referred to in subsection (a) may be performed if the Secretary determines that performance of the contract outside that specific region—

(1) could adversely affect the military preparedness of the armed forces; or

(2) would violate the terms of an international agreement to which the United States is a party.

(d) DEFINITION.—In this section, the term ''major non-NATO ally'' has the meaning given that term in section 2350a(i)(3) of this title.

(Added Pub. L. 103–160, div. A, title XIV, §1431(a)(1), Nov. 30, 1993, 107 Stat. 1832.)

PRIOR PROVISIONS

A prior section 2349, added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1018, §2330; renumbered §2349, Pub. L. 99–145, title XIII, §1304(a)(3), Nov. 8, 1985, 99 Stat. 741; Pub. L. 101–189, div. A, title IX, §931(e)(1), Nov. 29, 1989, 103 Stat. 1535, directed Secretary of Defense to submit a report to Congress annually relating to agreements under this chapter, prior to repeal by Pub. L. 101–510, §1301(11).

Similar provisions were contained in Pub. L. 101–510, div. A, title XIV, §1465, Nov. 5, 1990, 104 Stat. 1700, as amended, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 103–160, §1431(b)(1).

Other prior similar provisions, formerly set out under section 2341 of this title, were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, §9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, §1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, §8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, §8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, §1021, Dec. 4, 1987, 101 Stat. 1143.

§2349a. Annual report on non-NATO agreements

(a) REPORT.—The Secretary of Defense shall submit to Congress, not later than January 15 of each of 1996, 1997, 1998, 1999, and 2000, a report covering non-NATO cross-servicing and acquisition actions in effect during the preceding fiscal year.

(b) MATTERS TO BE INCLUDED.—Each such report shall set forth in detail the following with respect to the preceding fiscal year:

(1) The total dollar amounts involved.

(2) A description of any services and equipment provided or received through those actions.

(3) A description of any equipment provided through those actions that is not returned.

(4) The volume of credits and liabilities accrued and liquidated.

(c) NON-NATO AGREEMENTS.—For purposes of this section, a non-NATO cross-servicing and acquisition agreement is a cross-servicing and acquisition agreement under this subchapter that involves countries or organizations other than North Atlantic Treaty Organization countries or subsidiary bodies.

(Added Pub. L. 103–337, div. A, title XIII, § 1317(i)(1), Oct. 5, 1994, 108 Stat. 2902.)

EFFECTIVE DATE

Section applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as an Effective Date of 1994 Amendment note under section 2341 of this title.

§ 2350. Definitions

In this subchapter:

(1) The term ''logistic support, supplies, and services'' means food, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. Such term includes temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List pursuant to section 38(a)(1) of the Arms Export Control Act.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' means—

(A) any organization within the meaning of the term ''subsidiary bodies'' in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.

(3) The term ''military region'' means the geographical area of responsibility assigned to the commander of a unified combatant command (excluding Europe and adjacent waters).

(4) The term ''transfer'' means selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing logistic support, supplies, and services under the terms of a cross-servicing agreement.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1019, § 2331; renumbered § 2350, Pub. L. 99–145, title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(f), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(h), Oct. 5, 1994, 108 Stat. 2901.)

REFERENCES IN TEXT

Section 38(a)(1) of the Arms Export Control Act, referred to in par. (1), is classified to section 2778(a)(1) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Par. (1). Pub. L. 103–337, § 1317(h)(1), inserted ''(including airlift)'' after ''transportation'', ''calibration services,'' after ''maintenance services,'', and ''Such term includes temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List pursuant to section 38(a)(1) of the Arms Export Control Act.'' at end.

Par. (4). Pub. L. 103–337, § 1317(h)(2), added par. (4).

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' in introductory provisions.

1987—Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1) and (3) and substituted lowercase letter.

1986—Par. (3). Pub. L. 99–661 added par. (3).

1985—Pub. L. 99–145 renumbered section 2331 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2350a, 2350c of this title.

SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS

Sec.
2350a. Cooperative research and development projects: allied countries.
2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment.
2350c. Cooperative military airlift agreements: allied countries.
2350d. Cooperative logistic support agreements: NATO countries.
2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense.
2350f. Procurement of communications support and related supplies and services.
2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements.
2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories.
2350i. Foreign contributions for cooperative projects.
2350j. Burden sharing contributions by designated countries and regional organizations.

Sec.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XIV, §1402(b), Nov. 30, 1993, 107 Stat. 1826, added item 2350j.

1991—Pub. L. 102–190, div. A, title X, §1047(b), Dec. 5, 1991, 105 Stat. 1468, added item 2350i.

Pub. L. 102–25, title VII, §704(a)(9), Apr. 6, 1991, 105 Stat. 119, made clarifying amendment to directory language of Pub. L. 101–510, div. A, title XIV, §1451(b)(2), Nov. 5, 1990, 104 Stat. 1693. See 1990 Amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, §1452(a)(2), Nov. 5, 1990, 104 Stat. 1694, added item 2350h.

Pub. L. 101–510, div. A, title XIV, §1451(b)(2), Nov. 5, 1990, 104 Stat. 1693, as amended by Pub. L. 102–25, title VII, §704(a)(9), Apr. 6, 1991, 105 Stat. 119, added item 2350g.

§2350a. Cooperative research and development projects: allied countries

(a) AUTHORITY TO ENGAGE IN COOPERATIVE R&D PROJECTS.—The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more major allies of the United States or NATO organizations for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(b) REQUIREMENT THAT PROJECTS IMPROVE CONVENTIONAL DEFENSE CAPABILITIES.—(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization (NATO) or the common conventional defense capabilities of the United States and its major non-NATO allies.

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition and Technology.

(c) COST SHARING.—Each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.

(d) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.—(1) In order to assure substantial participation on the part of the major allies of the United States in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

(2) A major ally of the United States may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making that ally's contribution to a cooperative research and development program entered into with the United States under this section.

(e) COOPERATIVE OPPORTUNITIES DOCUMENT.—(1)(A) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, the Under Secretary of Defense for Acquisition and Technology shall prepare an arms cooperation opportunities document with respect to that project for review by the Defense Acquisition Board at formal meetings of the Board.

(B) The Under Secretary shall also prepare an arms cooperation opportunities document for review of each new project for which a document known as a Mission Need Statement is prepared.

(2) An arms cooperation opportunities document referred to in paragraph (1) shall include the following:

(A) A statement indicating whether or not a project similar to the one under consideration by the Department of Defense is in development or production by one or more of the major allies of the United States or NATO organizations.

(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more major allies of the United States or NATO organizations, an assessment by the Under Secretary of Defense for Acquisition and Technology as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project of the United States under consideration by the Department of Defense.

(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more major allies of the United States or NATO organizations.

(D) The recommendation of the Under Secretary as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more major allies of the United States or NATO organizations.

(f) REPORTS TO CONGRESS.—(1) Not later than March 1 of each year, the Under Secretary of Defense for Acquisition and Technology shall submit to the Speaker of the House of Representatives and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects under this section. Each such report shall include—

(A) a description of the status, funding, and schedule of existing projects carried out under this section for which memoranda of understanding (or other formal agreements) have been entered into; and

(B) a description of the purpose, funding, and schedule of any new projects proposed to be carried out under this section (including those projects for which memoranda of understanding (or other formal agreements) have not yet been entered into) for which funds have been included in the budget submitted to Congress pursuant to section 1105 of title 31 for the fiscal year following the fiscal year in which the report is submitted.

(2) The Secretary of Defense and the Secretary of State, whenever they consider such action to

be warranted, shall jointly submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report—

(A) enumerating those countries to be added to or deleted from the existing designation of countries designated as major non-NATO allies for purposes of this section; and

(B) specifying the criteria used in determining the eligibility of a country to be designated as a major non-NATO ally for purposes of this section.

(g) SIDE-BY-SIDE TESTING.—(1) It is the sense of Congress—

(A) that the Secretary of Defense should test conventional defense equipment, munitions, and technologies manufactured and developed by major allies of the United States and other friendly foreign countries to determine the ability of such equipment, munitions, and technologies to satisfy United States military requirements or to correct operational deficiencies; and

(B) that while the testing of nondevelopmental items and items in the late state of the development process are preferred, the testing of equipment, munitions, and technologies may be conducted to determine procurement alternatives.

(2) The Secretary of Defense may acquire equipment, munitions, and technologies of the type described in paragraph (1) for the purpose of conducting the testing described in that paragraph.

(3) The Deputy Director, Defense Research and Engineering (Test and Evaluation) shall notify the Speaker of the House of Representatives and the Committees on Armed Services and on Appropriations of the Senate of the Deputy Director's intent to obligate funds made available to carry out this subsection not less than 30 days before such funds are obligated.

(4) The Secretary of Defense shall submit to Congress each year, not later than March 1, a report containing information on—

(A) the equipment, munitions, and technologies manufactured and developed by major allies of the United States and other friendly foreign countries that were evaluated under this subsection during the previous fiscal year;

(B) the obligation of any funds under this subsection during the previous fiscal year; and

(C) the equipment, munitions, and technologies that were tested under this subsection and procured during the previous fiscal year.

(h) SECRETARY TO ENCOURAGE SIMILAR PROGRAMS.—The Secretary of Defense shall encourage major allies of the United States to establish programs similar to the one provided for in this section.

(i) DEFINITIONS.—In this section:

(1) The term ''cooperative research and development project'' means a project involving joint participation by the United States and one or more major allies of the United States or NATO organizations under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program—

(A) to develop new conventional defense equipment and munitions; or

(B) to modify existing military equipment to meet United States military requirements.

(2) The term ''major ally of the United States'' means—

(A) a member nation of the North Atlantic Treaty Organization (other than the United States); or

(B) a major non-NATO ally.

(3) The term ''major non-NATO ally'' means a country (other than a member nation of the North Atlantic Treaty Organization) that is designated as a major non-NATO ally for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(4) The term ''NATO organization'' means any North Atlantic Treaty Organization subsidiary body referred to in section 2350(2) of this title and any other organization of the North Atlantic Treaty Organization.

(Added Pub. L. 101–189, div. A, title IX, § 931(a)(2), Nov. 29, 1989, 103 Stat. 1531; amended Pub. L. 101–510, div. A, title XIII, § 1331(4), Nov. 5, 1990, 104 Stat. 1673; Pub. L. 102–190, div. A, title X, § 1053, Dec. 5, 1991, 105 Stat. 1471; Pub. L. 102–484, div. A, title VIII, § 843(b)(1), Oct. 23, 1992, 106 Stat. 2469; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title XIII, § 1301, Oct. 5, 1994, 108 Stat. 2888.)

PRIOR PROVISIONS

Similar provisions relating to NATO countries were contained in Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 931(d)(1).

Similar provisions relating to major non-NATO allies were contained in section 2767a of Title 22, Foreign Relations and Intercourse, prior to repeal by Pub. L. 101–189, § 931(d)(2).

AMENDMENTS

1994—Subsecs. (a), (e)(2)(A) to (D), (i)(1). Pub. L. 103–337, § 1301(a), inserted ''or NATO organizations'' after ''major allies of the United States''.

Subsec. (i)(4). Pub. L. 103–337, § 1301(b), added par. (4).

1993—Subsecs. (b)(2), (e)(1)(A), (2)(B), (f)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (c). Pub. L. 102–484 inserted ''(including the costs of claims)'' after ''the project''.

1991—Subsec. (g)(1)(A), (4)(A). Pub. L. 102–190 inserted ''and other friendly foreign countries'' after ''major allies of the United States''.

1990—Subsec. (g)(4). Pub. L. 101–510 amended introductory provisions generally, substituting ''submit to Congress each year, not later than March 1, a report containing'' for ''include in the annual report to Congress required by section 2457(d) of this title''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

TERMINATION DATE OF 1992 AMENDMENT

Section 843(c) of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, § 202(a)(7), May 31, 1993, 107 Stat. 101, provided that, effective Oct. 23, 1994, subsections (a) and (b) of section 843 of Pub. L. 102–484 (amending sections 2350a and 2350d of this title and section 2767 of Title 22, Foreign Relations and Intercourse) were to cease to be in effect, and section 27(c) of the Arms Export Control Act (22 U.S.C. 2767(c)) and sections 2350a(c) and 2350d(c) of this title were to read as if such subsections had not been enacted, prior to repeal by Pub. L. 103–337, div. A, title XIII, § 1318, Oct. 5, 1994, 108 Stat. 2902.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2349 of this title; title 22 sections 2761, 2796d.

§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to cooperative projects (as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically—

(A) prescribe procedures to be followed in the formation of contracts;

(B) prescribe terms and conditions to be included in contracts;

(C) prescribe requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) prescribe requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the Acquisition Executive designated for the Office of the Secretary of Defense.

(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract to be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.

(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.

(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in a cooperative project makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing—

(1) the Secretary of Defense to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)).

(Added Pub. L. 99–145, title XI, § 1102(b)(1), Nov. 8, 1985, 99 Stat. 710, § 2407; amended Pub. L. 99–661, div. A, title XI, § 1103(b)(1), (2)(A), title XIII, § 1343(a)(15), Nov. 14, 1986, 100 Stat. 3963,

3993; renumbered § 2350b and amended Pub. L. 101–189, div. A, title IX, § 931(b)(1), (e)(3), Nov. 29, 1989, 103 Stat. 1534, 1535.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c)(1), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1989—Pub. L. 101–189 renumbered section 2407 of this title as this section and substituted ''Cooperative projects under Arms Export Control Act: acquisition of defense equipment'' for ''Acquisition of defense equipment under cooperative projects'' as section catchline.

1986—Pub. L. 99–661, § 1103(b)(2)(A), struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in section catchline.

Subsec. (a)(1). Pub. L. 99–661, § 1103(b)(1)(A), struck out ''North Atlantic Treaty Organization (NATO)'' before ''cooperative projects''.

Subsec. (c)(2). Pub. L. 99–661, § 1103(b)(1)(B), struck out ''NATO'' after ''will significantly further''.

Subsec. (e). Pub. L. 99–661, § 1103(b)(1)(C), struck out ''NATO'' after ''will significantly further'' in par. (1) and after ''United States) in a'' in par. (2).

Subsec. (g)(2). Pub. L. 99–661, § 1343(a)(15), substituted ''section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))'' for ''the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b))''.

§ 2350c. Cooperative military airlift agreements: allied countries

(a) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into cooperative military airlift agreements with the government of any allied country for the transportation of the personnel and cargo of the military forces of that country on aircraft operated by or for the military forces of the United States in return for the reciprocal transportation of the personnel and cargo of the military forces of the United States on aircraft operated by or for the military forces of that allied country. Any such agreement shall include the following terms:

(1) The rate of reimbursement for transportation provided shall be the same for each party and shall be not less than the rate charged to military forces of the United States, as determined by the Secretary of Defense under section 2208(h) of this title.

(2) Credits and liabilities accrued as a result of providing or receiving transportation shall be liquidated as agreed upon by the parties. Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.

(3) During peacetime, the only military airlift capacity that may be used to provide transportation is that capacity that (A) is not needed to meet the transportation requirements of the military forces of the country providing the transportation, and (B) was not created solely to accommodate the requirements of the military forces of the country receiving the transportation.

(4) Defense articles purchased by an allied country from the United States under the Arms Export Control Act (22 U.S.C. 2751 et seq.) or from a commercial source under the export controls of the Arms Export Control Act may not be transported (for the purpose of delivery incident to the purchase of the defense articles) to the purchasing allied country on aircraft operated by or for the military forces of the United States except at a rate of reimbursement that is equal to the full cost of transportation of the defense articles, as required by section 21(a)(3) of the Arms Export Control Act (22 U.S.C. 2761(a)(3)).

(b) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into nonreciprocal military airlift agreements with North Atlantic Treaty Organization subsidiary bodies for the transportation of the personnel and cargo of such subsidiary bodies on aircraft operated by or for the military forces of the United States. Any such agreement shall be subject to such terms as the Secretary of Defense considers appropriate.

(c) Any amount received by the United States as a result of an agreement entered into under this section shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(d) Notwithstanding subchapter I, the Secretary of Defense may enter into military airlift agreements with allied countries only under the authority of this section.

(e) In this section:

(1) The term ''allied country'' means any of the following:

(A) A country that is a member of the North Atlantic Treaty Organization.

(B) Australia, New Zealand, Japan, and the Republic of Korea.

(C) Any other country designated as an allied country for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' has the meaning given to it by section 2350 of this title.

(Added Pub. L. 97–252, title XI, § 1125(a), Sept. 8, 1982, 96 Stat. 757, § 2213; amended Pub. L. 99–145, title XIII, § 1304(b), Nov. 8, 1985, 99 Stat. 742; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350c and amended Pub. L. 101–189, div. A, title IX, § 931(b)(2), (e)(4), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 102–484, div. A, title XIII, § 1311, Oct. 23, 1992, 106 Stat. 2547.)

REFERENCES IN TEXT

The Arms Export Control Act (22 U.S.C. 2751 et seq.), referred to in subsec. (a)(4), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–484, § 1311(a), substituted ''as agreed upon by the parties. Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.'' for ''not less often than once every 3 months by direct payment to the country that has provided the greater amount of transportation.''

Subsec. (e)(1)(B). Pub. L. 102–484, § 1311(b), substituted '', New Zealand, Japan, and the Republic of Korea'' for ''or New Zealand''.

1989—Pub. L. 101–189 renumbered section 2213 of this title as this section and inserted '': allied countries'' after ''airlift agreements'' in section catchline.

Subsec. (d). Pub. L. 101–189, § 931(b)(2), substituted ''subchapter I'' for ''chapter 138 of this title''.

1987—Subsec. (e). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''allied'' for ''Allied'' in par. (1).

1985—Subsec. (e)(2). Pub. L. 99–145 substituted ''section 2350'' for ''section 2331''.

§ 2350d. Cooperative logistic support agreements: NATO countries

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Weapon System Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Maintenance and Supply Organization. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement—

(A) shall be entered into pursuant to the terms of the charter of the NATO Maintenance and Supply Organization; and

(B) shall provide for the common logistic support of a specific weapon system common to the participating countries.

(2) Such an agreement may provide for—

(A) the transfer of logistics support, supplies, and services by the United States to the NATO Maintenance and Supply Organization; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) AUTHORITY OF SECRETARY.—Under the terms of a Weapon System Partnership Agreement, the Secretary of Defense—

(1) may agree that the NATO Maintenance and Supply Organization may enter into contracts for supply and acquisition of logistics support in Europe for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the NATO Maintenance and Supply Organization to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Maintenance and Supply Organization to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each Weapon System Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) APPLICATION OF CHAPTER 137.—Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a Weapon System Partnership Agreement.

(e) APPLICATION OF ARMS EXPORT CONTROL ACT.—Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Maintenance and Supply Organization for the purposes of a Weapon System Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) SUPPLEMENTAL AUTHORITY.—The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

(Added and amended Pub. L. 101–189, div. A, title IX, §§ 931(c), 938(c), Nov. 29, 1989, 103 Stat. 1534, 1539; Pub. L. 102–484, div. A, title VIII, § 843(b)(2), Oct. 23, 1992, 106 Stat. 2469.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (e), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 99–661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 931(d)(2).

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484 inserted ''and costs of claims'' after ''administrative costs''.

1989—Subsec. (e). Pub. L. 101–189, § 938(c), inserted ''this chapter and'' after ''in accordance with''.

§ 2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense

(a) AUTHORITY UNDER AWACS PROGRAM.—The Secretary of Defense, in carrying out an AWACS memorandum of understanding, may do the following:

(1) Waive reimbursement for the cost of the following functions performed by personnel other than personnel employed in the United States Air Force Airborne Warning and Control System (AWACS) program office:

(A) Auditing.

(B) Quality assurance.

(C) Codification.

(D) Inspection.

(E) Contract administration.

(F) Acceptance testing.

(G) Certification services.

(H) Planning, programming, and management services.

(2) Waive any surcharge for administrative services otherwise chargeable.

(3) In connection with that Program, assume contingent liability for—

(A) program losses resulting from the gross negligence of any contracting officer of the United States;

(B) identifiable taxes, customs duties, and other charges levied within the United States on the program; and

(C) the United States share of the unfunded termination liability.

(b) CONTRACT AUTHORITY LIMITATION.—Authority under this section to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(c) DEFINITION.—In this section, the term ''AWACS memorandum of understanding'' means—

(1) the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme, signed by the Secretary of Defense on December 6, 1978;

(2) the Memorandum of Understanding for Operations and Support of the NATO Airborne Early Warning and Control Force, signed by the United States Ambassador to NATO on September 26, 1984;

(3) the Addendum to the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme (dated December 6, 1978) relating to the modernization of the NATO Airborne Early Warning and Control (NAEW&C) System, dated December 7, 1990; and

(4) any other follow-on support agreement for the NATO E–3A Cooperative Programme.

(Added Pub. L. 101–189, div. A, title IX, § 932(a)(1), Nov. 29, 1989, 103 Stat. 1536; amended Pub. L. 102–190, div. A, title X, § 1051, Dec. 5, 1991, 105 Stat. 1470; Pub. L. 103–160, div. A, title XIV, § 1413, Nov. 30, 1993, 107 Stat. 1829.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 932(b).

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 struck out subsec. (d) which read as follows: ''EXPIRATION.—The authority provided by this section expires on September 30, 1993.''

1991—Subsec. (c)(3), (4). Pub. L. 102–190, § 1051(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 102–190, § 1051(2), substituted ''1993'' for ''1991''.

§ 2350f. Procurement of communications support and related supplies and services

(a) As an alternative means of obtaining communications support and related supplies and services, the Secretary of Defense, subject to the approval of the Secretary of State, may enter into a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations, under which, in return for being provided communications support and related supplies and services, the United States would agree to provide to the allied country or countries or allied international organization or allied international organizations, as the case may be, an equivalent value of communications support and related supplies and services. The term of an arrangement entered into under this subsection may not exceed five years.

(b)(1) Any arrangement entered into under this section shall require that any accrued credits and liabilities resulting from an unequal exchange of communications support and related supplies and services during the term of such arrangement would be liquidated by direct payment to the party having provided the greater amount of communications support and related supplies and services. Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.

(2) Parties to an arrangement entered into under this section shall annually reconcile accrued credits and liabilities accruing under such agreement. Any liability of the United States resulting from a reconciliation shall be charged against the applicable appropriation available to the Department of Defense (at the time of the reconciliation) for obligation for communications support and related supplies and services.

(3) Payments received by the United States shall be credited to the appropriation from which such communications support and related supplies and services have been provided.

(c) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives copies of all documents evidencing an arrangement entered into under subsection (a) not later than 45 days after entering into such an arrangement.

(d) In this section:

(1) The term ''allied country'' means—

(A) a country that is a member of the North Atlantic Treaty Organization;

(B) Australia, New Zealand, Japan, or the Republic of Korea; or

(C) any other country designated as an allied country for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''allied international organization'' means the North Atlantic Treaty Organization (NATO) or any other international organization designated as an allied international organization for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(Added Pub. L. 98–525, title X, § 1005(a), Oct. 19, 1984, 98 Stat. 2578, § 2401a; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350f and amended Pub. L. 101–189, div. A, title IX, § 933(a)–(d), Nov. 29, 1989, 103 Stat. 1537; Pub. L. 101–510, div. A, title XIV, § 1484(k)(8), Nov. 5, 1990, 104 Stat. 1719.)

AMENDMENTS

1990—Subsec. (d)(1)(A). Pub. L. 101–510 substituted a semicolon for '', or'' at end.

1989—Pub. L. 101–189, § 933(a), renumbered section 2401a of this title as this section.

Subsec. (a). Pub. L. 101–189, § 933(b), substituted ''a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations'' for ''an arrangement with the Minister of Defense or other appropriate official of any allied country or with the North Atlantic Treaty Organization (NATO),'' and ''the allied country or countries or allied international organization or allied international organizations, as the case may be,'' for ''such country or NATO'' and inserted ''The term of an arrangement entered into under this subsection may not exceed five years.''

Subsec. (b). Pub. L. 101–189, § 933(c), designated first sentence as par. (1), inserted ''Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.'' after ''supplies and services.'', added par. (2), and designated second sentence as par. (3).

Subsec. (d). Pub. L. 101–189, § 933(d)(1), (2), substituted ''In this section:'' and par. (1) for ''In this section, the term 'allied country' means—'' and redesignated former cls. (1) and (2) as cls. (A) and (B).

Subsec. (d)(1)(A). Pub. L. 101–189, § 933(d)(3), which directed amendment of cl. (A) by substituting a semicolon for ''; or'' at end, could not be executed because ''; or'' did not appear.

Subsec. (d)(1)(B). Pub. L. 101–189, § 933(d)(4), substituted ''; or'' for period at end.

Subsec. (d)(1)(C), (2). Pub. L. 101–189, § 933(d)(5), added cl. (C) and par. (2).

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements

(a) AUTHORITY TO ACCEPT.—The Secretary of Defense may accept from a foreign country, for the support of any element of the armed forces in an area of that country—

(1) real property or the use of real property and services and supplies for the United States or for the use of the United States in accordance with a mutual defense agreement or occupational arrangement; and

(2) services furnished as reciprocal international courtesies or as services customarily made available without charge.

(b) QUARTERLY REPORTS.—(1) Not later than 30 days after the end of each quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on property, services, and supplies accepted by the Secretary under this section during the preceding quarter. The Secretary shall include in each such report a description of all property, services, and supplies having a value of more than $1,000,000.

(2) In computing the value of any property, services, and supplies referred to in paragraph (1), the Secretary shall aggregate the value of—

(A) similar items of property, services, and supplies accepted by the Secretary during the quarter concerned; and

(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.

(c) AUTHORITY TO USE PROPERTY, SERVICES, AND SUPPLIES.—Property, services, or supplies referred to in subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property, services, and supplies may not be used in connection with any program, project, or activity if the use of such property, services, or supplies would result in the violation of any prohibition or limitation otherwise applicable to that program, project, or activity.

(d) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(Added Pub. L. 101–510, div. A, title XIV, § 1451(b)(1), Nov. 5, 1990, 104 Stat. 1692; amended Pub. L. 103–160, div. A, title XI, § 1105(a), Nov. 30, 1993, 107 Stat. 1749.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, § 9008, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 101–510, § 1451(c).

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of property, services, and supplies accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

§ 2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories

The Secretary of Defense shall designate an official to act as ombudsman within the Department of Defense on behalf of foreign governments who are parties to memorandums of agreement with the United States concerning acquisition matters under the jurisdiction of the Secretary of Defense. The official so designated shall assist officials of those foreign governments in understanding and complying with procedures and requirements of the Department of Defense (and, as appropriate, other departments and agencies of the United States) insofar as they relate to any such memorandum of agreement.

(Added Pub. L. 101–510, div. A, title XIV, § 1452(a)(1), Nov. 5, 1990, 104 Stat. 1693.)

DEADLINE FOR DESIGNATION OF OMBUDSMAN

Section 1452(b) of Pub. L. 101–510 provided that: ''The official required to be designated under section 2350h of title 10, United States Code, as added by subsection (a), shall be designated by the Secretary of Defense not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

§ 2350i. Foreign contributions for cooperative projects

(a) CREDITING OF CONTRIBUTIONS.—Whenever the United States participates in a cooperative project with a friendly foreign country or the North Atlantic Treaty Organization (NATO) on a cost-sharing basis, any contribution received by the United States from that foreign country or NATO to meet its share of the costs of the project may be credited to appropriations available to an appropriate military department or another appropriate organization within the Department of Defense, as determined by the Secretary of Defense.

(b) USE OF AMOUNTS CREDITED.—The amount of a contribution credited pursuant to subsection (a) to an appropriation account in connection with a cooperative project referred to in that subsection shall be available only for payment of the share of the project expenses allocated to the foreign country or NATO making the contribution. Payments for which such amount is available include the following:

(1) Payments to contractors and other suppliers (including the Department of Defense and other participants acting as suppliers) for necessary articles and services.

(2) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation.

(3) Payments or reimbursements of other program expenses, including program office overhead and administrative costs.

(4) Refunds to other participants.

(c) DEFINITIONS.—In this section:

(1) The term ''cooperative project'' means a jointly managed arrangement, described in a written cooperative agreement entered into by the participants, that—

(A) is undertaken by the participants in order to improve the conventional defense capabilities of the participants; and

(B) provides for—

(i) one or more participants (other than the United States) to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of defense articles;

(ii) the United States and another participant concurrently to produce in the United States and the country of such other participant a defense article jointly developed in a cooperative project described in clause (i); or

(iii) the United States to procure a defense article or a defense service from another participant in the cooperative project.

(2) The term ''defense article'' has the meaning given such term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2794(3)).

(3) The term ''defense service'' has the meaning given such term in section 47(4) of the Arms Export Control Act (22 U.S.C. 2794(4)).

(Added Pub. L. 102–190, div. A, title X, § 1047(a), Dec. 5, 1991, 105 Stat. 1467.)

§ 2350j. Burden sharing contributions by designated countries and regional organizations

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State, for the purposes specified in subsection (c).

(b) CREDIT TO APPROPRIATIONS.—Contributions accepted in a fiscal year under subsection (a) shall be credited to appropriations of the Department of Defense that are available for that fiscal year for the purposes for which the contributions are made. The contributions so credited shall be—

(1) merged with the appropriations to which they are credited; and

(2) available for the same time period as those appropriations.

(c) AVAILABILITY OF CONTRIBUTIONS.—Contributions accepted under subsection (a) shall be available only for the payment of the following costs:

(1) Compensation for local national employees of the Department of Defense.

(2) Military construction projects of the Department of Defense.

(3) Supplies and services of the Department of Defense.

(d) AUTHORIZATION OF MILITARY CONSTRUCTION.—Contributions credited under subsection (b) to an appropriation account of the Department of Defense may be used—

(1) by the Secretary of Defense to carry out a military construction project that is consistent with the purposes for which the contributions were made and is not otherwise authorized by law; or

(2) by the Secretary of a military department, with the approval of the Secretary of Defense, to carry out such a project.

(e) NOTICE AND WAIT REQUIREMENTS.—(1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit a report to the congressional defense committees containing—

(A) an explanation of the need for the project;

(B) the then current estimate of the cost of the project; and

(C) a justification for carrying out the project under that subsection.

(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 21-day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project.

(f) REPORTS.—Not later than 30 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report specifying separately for each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)—

(1) the amount of the contributions accepted by the Secretary during the preceding fiscal

year under subsection (a) and the purposes for which the contributions were made; and

(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.

(Added Pub. L. 103–160, div. A, title XIV, § 1402(a), Nov. 30, 1993, 107 Stat. 1825; amended Pub. L. 103–337, div. A, title X, § 1070(a)(10), Oct. 5, 1994, 108 Stat. 2856.)

CODIFICATION

Section, as added by Pub. L. 103–160, consists of text of Pub. L. 102–190, div. A, title X, § 1045, Dec. 5, 1991, 105 Stat. 1465, as amended by Pub. L. 102–484, div. A, title XIII, § 1305(a), (b), Oct. 23, 1992, 106 Stat. 2546, and revised by Pub. L. 103–160, in subsec. (a), by substituting ''The Secretary'' for ''During fiscal years 1992 and 1993, the Secretary'', inserting '', after consultation with the Secretary of State,'' after ''Secretary of Defense'', and substituting ''from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State'' for ''from Japan, Kuwait, and the Republic of Korea'', and in subsec. (f), by substituting ''each fiscal year'' for ''each quarter of fiscal years 1992 and 1993'', ''Congress'' for ''congressional defense committees'', ''each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)'' for ''Japan, Kuwait, and the Republic of Korea'', and ''the preceding fiscal year'' for ''the preceding quarter'' in pars. (1) and (2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 1070(a)(10)(A), inserted a comma after second reference to ''Secretary of State''.

Subsec. (f). Pub. L. 103–337, § 1070(a)(10)(B), struck out ''the'' before ''Congress'' in introductory provisions.

CHAPTER 139—RESEARCH AND DEVELOPMENT

Sec.
2351. Availability of appropriations.
2352. Contracts: notice to Congress required for contracts performed over period exceeding 10 years.
2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.
2354. Contracts: indemnification provisions.
[2355. Repealed.]
2356. Contracts: delegations.
[2357. Repealed.]
2358. Research and development projects.
[2359. Repealed.]
2360. Research and development laboratories: contracts for services of university students.
2361. Award of grants and contracts to colleges and universities: requirement of competition.
[2362, 2363. Repealed.]
2364. Coordination and communication of defense research activities.
[2365. Repealed.]
2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
2367. Use of federally funded research and development centers.
[2368, 2369. Repealed.]
2370. Biological Defense Research Program.
2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats.
2371. Research projects: transactions other than contracts and grants.
2372. Independent research and development and bid and proposal costs: payments to contractors.
2373. Procurement for experimental purposes.
2374. Merit-based award of grants for research and development.

AMENDMENTS

1994—Pub. L. 103–355, title I, § 1301(c), title II, § 2002(b), title III, § 3062(b), title VII, § 7203(a)(3), Oct. 13, 1994, 108 Stat. 3287, 3303, 3337, 3380, added item 2374, substituted in item 2358 ''Research and development projects'' for ''Research projects'' and in item 2371 ''Research projects: transactions other than contracts and grants'' for ''Advanced research projects: cooperative agreements and other transactions'', and struck out item 2355 ''Contracts: vouchering procedures'' and item 2369 ''Product evaluation activity''.

1993—Pub. L. 103–160, div. A, title II, § 214(b), title VIII, § 828(a)(2), (c)(2), Nov. 30, 1993, 107 Stat. 1586, 1713, 1714, struck out item 2362 ''Testing requirements: wheeled or tracked armored vehicles'' and added items 2370a and 2373.

1992—Pub. L. 102–484, div. A, title VIII, § 821(c)(2), div. D, title XLII, § 4271(b)(3), Oct. 23, 1992, 106 Stat. 2460, 2696, struck out items 2363 ''Encouragement of technology transfer'' and 2365 ''Competitive prototype strategy requirement: major defense acquisition programs''.

1991—Pub. L. 102–190, div. A, title VIII, §§ 802(a)(2), 803(a)(2), 821(c)(2), Dec. 5, 1991, 105 Stat. 1414, 1415, 1431, substituted item 2352 for former item 2352 ''Contracts: limited to five-year terms'', struck out item 2368 ''Critical technologies research'', and substituted item 2372 for former item 2372 ''Independent research and development''.

Pub. L. 102–25, title VII, § 701(e)(5), Apr. 6, 1991, 105 Stat. 114, inserted period at end of item 2366.

1990—Pub. L. 101–510, div. A, title II, § 241(b), title VIII, § 824(a)(2), title XIII, § 1331(5), Nov. 5, 1990, 104 Stat. 1517, 1604, 1673, struck out items 2357 ''Contracts: reports to Congress'' and 2359 ''Salaries of officers of Federal contract research centers: reports to Congress'' and added items 2370 and 2372.

1989—Pub. L. 101–189, div. A, title II, § 251(a)(2), title VIII, §§ 802(c)(4)(B), 841(c)(2), Nov. 29, 1989, 103 Stat. 1404, 1486, 1514, substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in item 2366, substituted ''research'' for ''plan'' in item 2368, and added item 2371.

1988—Pub. L. 100–456, div. A, title II, § 220(b), title VIII, §§ 823(a)(2), 842(b), Sept. 29, 1988, 102 Stat. 1941, 2018, 2026, added items 2361, 2368, and 2369.

Pub. L. 100–370, § 1(g)(4), July 19, 1988, 102 Stat. 847, added item 2351, and struck out item 2361 ''Availability of appropriations''.

1987—Pub. L. 100–180, div. A, title XII, § 1231(10)(C), (12), Dec. 4, 1987, 101 Stat. 1160, substituted ''defense'' for ''Defense'' in item 2364 and ''federally'' for ''Federally'' in item 2367.

Pub. L. 100–26, § 5(3)(B), Apr. 21, 1987, 101 Stat. 274, made technical amendment to directory language of section 909(a)(2) of Pub. L. 99–500, Pub. L. 99–591, and 99–661. See 1986 Amendment note below.

Pub. L. 100–26, § 3(1)(B), Apr. 21, 1987, 101 Stat. 273, made technical amendment to directory language of section 234(c)(2) of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title II, § 234(c)(2), Nov. 14, 1986, 100 Stat. 3849, as amended by Pub. L. 100–26, § 3(1)(B), Apr. 21, 1987, 101 Stat. 273, added item 2364.

Pub. L. 99–500, § 101(c) [title X, §§ 909(a)(2), 910(a)(2), 912(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, 1783–144, 1783–146, and Pub. L. 99–591, § 101(c) [title X, §§ 909(a)(2), 910(a)(2), 912(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143, 3341–144, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 909(a)(2), 910(a)(2), 912(a)(2), Nov. 14, 1986, 100 Stat. 3849, 3922, 3924, 3926, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, § 5(3)(B), Apr. 21, 1987, 101 Stat. 274, amended analysis identically, adding items 2365, 2366, and 2367.

1985—Pub. L. 99–145, title I, § 123(a)(2), title XIV, § 1457(b), Nov. 8, 1985, 99 Stat. 601, 763, added items 2362 and 2363.

1982—Pub. L. 97–258, § 2(b)(3)(A), Sept. 13, 1982, 96 Stat. 1052, added item 2361.

1981—Pub. L. 97–86, title VI, § 603(b), Dec. 1, 1981, 95 Stat. 1110, added item 2360.

1979—Pub. L. 96–107, title VIII, 819(a)(2), Nov. 9, 1979, 93 Stat. 819, added item 2359.

1962—Pub. L. 87–651, title II, § 208(b), Sept. 7, 1962, 76 Stat. 523, added item 2358.

1958—Pub. L. 85–599, § 3(d), Aug. 6, 1958, 72 Stat. 516, struck out item 2351 ''Policy, plans, and coordination''.

CROSS REFERENCES

Amount of fee on cost-plus-a-fixed-fee contract for developmental or research work, see section 2306 of this title.

Employment of non-citizens, laws relating to not applicable to research and development activities, see section 1584 of this title.

Naval contracts for research, see section 7522 of this title.

§ 2351. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 2353 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97–258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, § 2361; renumbered § 2351 and amended Pub. L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, § 40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.

Subsection (b) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

PRIOR PROVISIONS

A prior section 2351, act Aug. 10, 1956, ch. 1041, 70A Stat. 133, related to policy, plans, and coordination relative to research and development on scientific problems relating to the national security, prior to repeal by Pub. L. 85–599, § 3(d).

AMENDMENTS

1988—Pub. L. 100–370 renumbered section 2361 of this title as this section, designated such provisions as subsec. (a), and added subsec. (b).

§ 2352. Contracts: notice to Congress required for contracts performed over period exceeding 10 years

(a) REQUIREMENT.—The Secretary of a military department shall submit to Congress a notice described in subsection (b) with respect to a contract of that military department for services for research or development in any case in which—

(1) the contract is awarded or modified, and the contract is expected, at the time of the award or as a result of the modification (as the case may be), to be performed over a period exceeding 10 years from the date of initial award of the contract; or

(2) the performance of the contract continues for a period exceeding 10 years, and no notice of the type described in subsection (b) has otherwise been provided to Congress.

(b) NOTICE.—The notice required under subsection (a) is a notice—

(1) identifying the contract;

(2) stating the date on which initial award of the contract occurred; and

(3) stating the period of time over which performance of the contract is expected to occur.

(c) TIME OF SUBMISSION OF NOTICE.—The notice required under subsection (a) shall be submitted not later than 30 days after—

(1) the date of award or modification of the contract, in the case of a contract described in subsection (a)(1); and

(2) the date on which performance of the contract exceeds 10 years, in the case of a contract described in subsection (a)(2).

(Aug. 10, 1956, ch. 1041, 70A Stat. 133; Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 803(a)(1), 105 Stat. 1414; Pub. L. 102–484, div. A, title X, § 1053(4), Oct. 23, 1992, 106 Stat. 2501.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2352	5:235d; 5:475i; 5:628d.	July 16, 1952, ch. 882, § 3, 66 Stat. 725.

The words ''or both'' are inserted to conform to sections 2353, 2354, 2355, and 2356 of this title.

AMENDMENTS

1992—Pub. L. 102–484 made technical correction to amendment by Pub. L. 102–190. See 1991 Amendment note below.

1991—Pub. L. 102–190, as amended by Pub. L. 102–484, substituted section catchline for one which read ''Contracts: limited to five-year terms'' and amended text generally. Prior to amendment, text read as follows: ''Subject to availability of appropriations, contracts of a military department for services and the use of facilities for research or development, or both, may be for a term of not more than five years, and may be extended for not more than five additional years.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(4) of Pub. L. 102–484 provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 803(b) of Pub. L. 102–190 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of October 31, 1991.''

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2353(a)	5:235e (1st sentence; and 2d sentence, less 2d and last provisos). 5:475j (1st sentence; and 2d sentence, less 2d and last provisos). 5:628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353(b)	5:235e (2d proviso of 2d sentence). 5:475j (2d proviso of 2d sentence). 5:628e (2d proviso of 2d sentence).	
2353(c)	5:235e (last proviso of 2d sentence). 5:475j (last proviso of 2d sentence). 5:628e (last proviso of 2d sentence).	

In subsection (a), the words ''furnished to'' and ''for the use thereof'' are omitted as surplusage.

In subsections (a) and (b), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the introductory clause is substituted for 5:235e (words of 2d proviso before clause (1)), 475j, and 628e. The words ''that * * * considers'' are substituted for the words ''as will in the opinion''. The words ''an alternative'' are substituted for the words ''such other''.

In subsection (c), the words ''Proceeds of'' are substituted for the words ''That all moneys arising from''.

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

Pub. L. 99–190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205, which provided that appropriations available to the Department of Defense for research and development could be used for 10 U.S.C. 2353 and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned, was repealed and restated in section 2351(b) of this title by Pub. L. 100–370, § 1(g)(1)(B), (2), July 19, 1988, 102 Stat. 846.

CROSS REFERENCES

Delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 2351, 2356 of this title; title 42 sections 241, 6981, 7404.

§ 2354. Contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2354(a)	5:235f (1st sentence, less provisos). 5:475k (1st sentence, less provisos). 5:628f (1st sentence, less provisos).	July 16, 1952, ch. 882, § 5, 66 Stat. 726.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2354(b)	5:235f (1st proviso of 1st sentence). 5:475k (1st proviso of 1st sentence). 5:628f (1st proviso of 1st sentence).	
2354(c)	5:235f (last proviso of 1st sentence). 5:475k (last proviso of 1st sentence). 5:628f (last proviso of 1st sentence).	
2354(d)	5:235f (less 1st sentence). 5:475k (less 1st sentence). 5:628f (less 1st sentence).	

In subsection (a), the words ''Liability on account of'', and ''of such claims'' are omitted as surplusage. In clauses (1) and (2), the word ''from'' is substituted for the words ''arising as a result of''.

In subsections (a) and (b), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''made under subsection (a), that provides for indemnification'' are substituted for the words ''so providing * * * with respect to any alleged liability for such death''. The words ''appropriate'' and ''or actions filed * * * or made'' are omitted as surplusage.

In subsection (c), the words ''by the Government'', ''authority of'', and ''for such purpose'' are omitted as surplusage.

In subsection (d), the words ''by the Congress'' and ''the making of'' are omitted as surplusage. The words ''or both'' are inserted to conform to subsection (a).

CROSS REFERENCES

Delegation of authority, see section 2356 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284, 1887, 2356 of this title; title 42 sections 241, 284, 1870, 1887.

[§ 2355. Repealed. Pub. L. 103–355, title II, § 2002(a), Oct. 13, 1994, 108 Stat. 3303]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, authorized Secretary of each military department to prescribe by regulation the extent of itemization, substantiation, or certification of vouchers for funds spent under research or development contracts prior to payment.

§ 2356. Contracts: delegations

(a) The Secretary of a military department may delegate any authority under section 1584, 2353, 2354, or 2355[1] of this title to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department; or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

However, the authority of the Secretary under section 2353(b)(3) of this title may not be delegated to a person described in clause (3) of this subsection.

(b) Subject to other provisions of law, the power to negotiate and administer contracts for research or development, or both, may be further delegated. In this section, the term ''negotiate'' means make without a solicitation for sealed bids under chapter 137 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 135; Sept. 2, 1958, Pub. L. 85–861, § 1(43A), 72 Stat. 1457; July 18, 1984, Pub. L. 98–369, div. B, title VII, § 2727(d), 98 Stat. 1195; Dec. 4, 1987, Pub. L. 100–180, div. A, title XII, § 1231(18)(B), 101 Stat. 1161.)

[1] See References in Text note below.

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2356(a)	5:235h (less last sentence, and less applicability to 5:235b). 5:475m (less last sentence, and less applicability to 5:475g). 5:628h (less last sentence, and less applicability to 5:628b).	July 16, 1952, ch. 882, § 7 (less applicability to § 1), 66 Stat. 726.
2356(b)	5:235h (last sentence, less applicability to 5:235b). 5:475m (last sentence, less applicability to 5:475g). 5:628h (last sentence, less applicability to 5:628b).	

In subsection (b), the last sentence is inserted to conform to section 2302 of this title.

1958 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2356(b)	[No source].	[No source].

The amendments reflect section 1(44) of the bill [amending section 2305 of Title 10].

REFERENCES IN TEXT

Section 2355 of this title, referred to in subsec. (a), was repealed by Pub. L. 103–355, title II, § 2002(a), Oct. 13, 1994, 108 Stat. 3303.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–180 inserted '', the term'' after ''In this section''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''a solicitation for sealed bids under chapter 137 of this title'' for ''the formal advertising prescribed by section 2305 of this title''.

1958—Subsec. (b). Pub. L. 85–861 substituted ''section 2305 of this title'' for ''section 2305(a) and (b) of this title''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

CROSS REFERENCES

Procurement generally, delegation of powers, see section 2311 of this title.

[§ 2357. Repealed. Pub. L. 101–510, div. A, title XIII, § 1301(11), Nov. 5, 1990, 104 Stat. 1668]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, required Secretary of each military department to report to Congress on contracts for research and development.

§ 2358. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

(c) REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in section 2371 of this title.

(Added Pub. L. 87–651, title II, § 208(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 97–86, title IX, § 910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100–370, § 1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103–160, div. A, title VIII, § 827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103–355, title I, § 1301(a), Oct. 13, 1994, 108 Stat. 3284.)

HISTORICAL AND REVISION NOTES

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2358	5:171c(b)(2), (3).	July 26, 1947, ch. 343, § 203(b)(2), (3); added Aug. 6, 1958, Pub. L. 85–599, § 9(a) (3d and 4th pars.), 72 Stat. 520.

5 U.S.C. 171c(b)(3) is omitted as unnecessary since the authorization for appropriations is implied in 5 U.S.C. 171c(b)(2).

1988 ACT

In the existing text of 10 U.S.C. 2358, the bill would in two instances strike the phrase ''or his designee'' appearing after ''Secretary of Defense'' (section 1(g)(3)). The change is made for consistency in the Code, and no substantive change is intended. The committee notes that the Secretary of Defense has general authority to delegate functions under 10 U.S.C. 113(d).

Subsection (b) is based on Pub. L. 91–441, title II, § 204, Oct. 7, 1970, 84 Stat. 908.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally, inserting reference to development projects in section catchline, and in text specifying that relevant Secretary may perform research and development projects in accordance with chapter 63 of title 31, and adding subsec. (d) relating to additional provisions applicable to cooperative agreements.

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) IN GENERAL.—Subject to approval by the President, the Secretary of Defense may engage in basic and applied research projects that are necessary to the responsibilities of the Department of Defense in the field of basic and applied research and development and that relate to weapons systems and other military needs. Subject to approval by the President, the Secretary may perform assigned research and development projects—

''(1) by contract with, or by grant to, educational or research institutions, private businesses, or other agencies of the United States;

''(2) through one or more of the military departments; or

''(3) by using employees and consultants of the Department of Defense.

''(b) REQUIREMENT OF POTENTIAL MILITARY RELATIONSHIP.—Funds appropriated to the Department of Defense may not be used to finance any research project or study unless the project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation.''

1988—Pub. L. 100–370 designated existing provisions as subsec. (a), inserted heading, struck out ''or his designee'' after ''Secretary of Defense'' and ''President, the Secretary'', and added subsec. (b).

1981—Par. (1). Pub. L. 97–86 substituted ''by contract with, or by grant to,'' for ''by contract with''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Pub. L. 103–337, div. A, title II, § 257, Oct. 5, 1994, 108 Stat. 2705, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense, acting through the Director of Defense Research and Engineering, shall carry out a Defense Experimental Program to Stimulate Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

''(b) PROGRAM OBJECTIVES.—The objectives of the program are as follows:

''(1) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is competitive under the peer-review systems used for awarding Federal research assistance.

''(2) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

''(c) PROGRAM ACTIVITIES.—In order to achieve the program objectives, the following activities are authorized under the program:

''(1) Competitive award of research grants.

''(2) Competitive award of financial assistance for graduate students.

''(d) ELIGIBLE STATES.—(1) The Director of the National Science Foundation shall designate which States are eligible States for the purposes of this section and shall notify the Director of Defense Research and Engineering of the States so designated.

''(2) The Director of the National Science Foundation shall designate a State as an eligible State if, as determined by the Director—

''(A) the institutional average amount of Federal financial assistance for research and development received by the institutions of higher education in the

State for the fiscal year preceding the fiscal year for which the designation is effective, or for the last fiscal year for which statistics are available, is less than the amount equal to 60 percent of the national institutional average amount of Federal financial assistance for research and development received by the institutions of higher education in the United States for such preceding or last fiscal year, as the case may be;

''(B) the State has demonstrated a commitment to developing research bases in the State and to improving science and engineering research and education programs at institutions of higher education in the State; and

''(C) the State is an eligible State for purposes of the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation.

''(e) COORDINATION WITH SIMILAR FEDERAL PROGRAMS.—(1) The Secretary shall consult with the Director of the National Science Foundation and the Director of the Office of Science and Technology Policy in the planning, development, and execution of the program and shall coordinate the program with the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation and with similar programs sponsored by other departments and agencies of the Federal Government.

''(2) All solicitations under the Defense Experimental Program to Stimulate Competitive Research shall be made to, and all awards shall be made through, the State committees established for purposes of the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation.

''(3) A State committee referred to in paragraph (2) shall ensure that activities carried out in the State of that committee under the Defense Experimental Program to Stimulate Competitive Research are coordinated with the activities carried out in the State under other similar initiatives of the Federal Government to stimulate competitive research.''

INCLUSION OF WOMEN AND MINORITIES IN CLINICAL RESEARCH PROJECTS

Section 252 of Pub. L. 103–160 provided that:

''(a) GENERAL RULE.—In conducting or supporting clinical research, the Secretary of Defense shall ensure that—

''(1) women who are members of the Armed Forces are included as subjects in each project of such research; and

''(2) members of minority groups who are members of the Armed Forces are included as subjects of such research.

''(b) WAIVER AUTHORITY.—The requirement in subsection (a) regarding women and members of minority groups who are members of the Armed Forces may be waived by the Secretary of Defense with respect to a project of clinical research if the Secretary determines that the inclusion, as subjects in the project, of women and members of minority groups, respectively—

''(1) is inappropriate with respect to the health of the subjects;

''(2) is inappropriate with respect to the purpose of the research; or

''(3) is inappropriate under such other circumstances as the Secretary of Defense may designate.

''(c) REQUIREMENT FOR ANALYSIS OF RESEARCH.—In the case of a project of clinical research in which women or members of minority groups will under subsection (a) be included as subjects of the research, the Secretary of Defense shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.''

UNIVERSITY RESEARCH INITIATIVE SUPPORT PROGRAM

Section 802 of Pub. L. 103–160 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense, through the Director of Defense Research and Engineering, shall establish a University Research Initiative Support Program.

''(b) PURPOSE.—Under the program, the Director shall award grants and contracts to eligible institutions of higher education to support the conduct of research and development relevant to requirements of the Department of Defense.

''(c) ELIGIBILITY.—An institution of higher education is eligible for a grant or contract under the program if the institution has received less than a total of $2,000,000 in grants and contracts from the Department of Defense in the two fiscal years before the fiscal year in which the institution submits a proposal for such grant or contract.

''(d) COMPETITION REQUIRED.—The Director shall use competitive procedures in awarding grants and contracts under the program.

''(e) SELECTION PROCESS.—In awarding grants and contracts under the program, the Director shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code. Such selection process shall require that each person selected to participate in such a merit-based selection process be a member of the faculty or staff of an institution of higher education that is a member of the National Association of State Universities and Land Grant Colleges or the American Association of State Colleges and Universities.

''(f) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act [Nov. 30, 1993], the Director shall prescribe regulations for carrying out the program.

''(g) FUNDING.—Of the amounts authorized to be appropriated under section 201 [107 Stat. 1583], $20,000,000 shall be available for the University Research Initiative Support Program.''

INDEPENDENT RESEARCH AND DEVELOPMENT; BID AND PROPOSAL COSTS; NEGOTIATION OF ADVANCE AGREEMENTS WITH CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 91–441, title II, § 203, Oct. 7, 1970, 84 Stat. 906, as amended by Pub. L. 96–342, title II, § 208, Sept. 8, 1980, 94 Stat. 1081, provided that no funds authorized to be appropriated to Department of Defense by this or any other Act were to be used to finance independent research and development or bid and proposal costs unless such work had, in opinion of Secretary of Defense, potential relationship to military functions or operations, and advance agreements regarding payment for such work had been negotiated, prior to repeal by Pub. L. 101–510, div. A, title VIII, § 824(b), Nov. 5, 1990, 104 Stat. 1604. See section 2372 of this title.

RELATIONSHIP OF RESEARCH PROJECTS OR STUDIES TO MILITARY FUNCTION OR OPERATION

Pub. L. 91–441, title II, § 204, Oct. 7, 1970, 84 Stat. 908, which provided that no funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation, was repealed and restated in subsec. (b) of this section by Pub. L. 100–370, § 1(g)(3)(C), (5), July 19, 1988, 102 Stat. 847.

HERBICIDES AND DEFOLIATION PROGRAM; COMPREHENSIVE STUDY AND INVESTIGATION; REPORT BY JANUARY 31, 1972; TRANSMITTAL TO PRESIDENT AND CONGRESS BY MARCH 1, 1972

Pub. L. 91–441, title V, § 506(c), Oct. 7, 1970, 84 Stat. 913, directed Secretary of Defense to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) ecological and physiological dangers inherent in use of herbicides, and (B) ecological and physiological effects of defoliation program carried

out by Department of Defense in South Vietnam, with a report on the study to be transmitted to President and Congress by Mar. 1, 1972.

CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE

Pub. L. 92–436, title VI, §606, Sept. 29, 1972, 86 Stat. 740, provided that:

''(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the reasons why such course of instruction is of vital importance to the security of the United States.

''(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

''(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 92–156, title V, §502, Nov. 17, 1971, 85 Stat. 427.
Pub. L. 91–441, title V, §510, Oct. 7, 1970, 84 Stat. 914.

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS' COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91–121, title IV, §407, Nov. 19, 1969, 83 Stat. 208, related to restrictions on use of appropriations for compensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, prior to repeal by Pub. L. 96–107, title VIII, §819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2371 of this title.

[§2359. Repealed. Pub. L. 101–510, div. A, title XIII, §1322(a)(5), Nov. 5, 1990, 104 Stat. 1671]

Section, added Pub. L. 96–107, title VIII, §819(a)(1), Nov. 9, 1979, 93 Stat. 818, related to reports on salaries of officers of Federal contract research centers.

§2360. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms ''student'', ''institution of higher learning'', and ''nonprofit organization''.

(Added Pub. L. 97–86, title VI, §603(a), Dec. 1, 1981, 95 Stat. 1110.)

§2361. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304 of this title (other than pursuant to subsection (c)(5) of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(c)(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

(B) the cumulative amount of such contracts received during that period by each such college and university.

(2) Each report under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

(Added Pub. L. 100–456, div. A, title II, § 220(a), Sept. 29, 1988, 102 Stat. 1940; amended Pub. L. 101–189, div. A, title II, § 252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101–510, div. A, title XIII, § 1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103–35, title II, § 201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title VIII, § 821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103–337, div. A, title VIII, § 813, Oct. 5, 1994, 108 Stat. 2816.)

PRIOR PROVISIONS

A prior section 2361 was renumbered section 2351 of this title.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 substituted ''inconsistent'' for ''inconsisent''.

Subsec. (c). Pub. L. 103–160 struck out subsec. (c) which read as follows:

''(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

''(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

''(B) the cumulative amount of such contracts received during that period by each such college and university.

''(2) The reports under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

''(3) A report is not required under paragraph (1) for any period beginning after December 31, 1993.''

1990—Subsec. (c)(1). Pub. L. 101–510, § 1311(4)(A), substituted ''an annual report'' for ''a semiannual report'' in introductory provisions.

Subsec. (c)(2). Pub. L. 101–510, § 1311(4)(B), substituted ''the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report'' for ''the six-month periods ending on June 30 and December 31 of each year. Each such report shall be submitted within 30 days after the end of the period covered by the report''.

1989—Subsec. (a). Pub. L. 101–189, § 252(a), substituted ''unless—'' for ''unless'' and pars. (1) and (2) for ''the grant or contract is made or awarded using competitive procedures.''

Subsec. (b). Pub. L. 101–189, § 252(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A provision of law enacted after the date of the enactment of this section may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law specifically refers to this section and specifically states that such provision of law modifies or supersedes the provisions of this section.''

Subsec. (c). Pub. L. 101–189, § 252(c)(1), added subsec. (c).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 821(b) of Pub. L. 103–160 provided that the amendment made by that section is effective Feb. 1, 1994.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 252(b)(2) of Pub. L. 101–189 provided that: ''Subsection (b) of section 2361 of title 10, United States Code, as amended by paragraph (1), applies with respect to any provision of law enacted after September 30, 1989.''

EFFECTIVE DATE

Section 220(c) of Pub. L. 100–456 provided that: ''The limitation specified in section 2361(a) of title 10, United States Code (as added by subsection (a)), on the authority of the Secretary of Defense to make grants and award contracts shall take effect on October 1, 1989.''

INITIAL REPORT ON USE OF COMPETITIVE PROCEDURES IN AWARDING CONTRACTS

Section 252(c)(2) of Pub. L. 101–189 required that first report under subsec. (c) of this section cover last six months of 1989 and be submitted not later than Feb. 1, 1990.

[§ 2362. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(3), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 99–145, title I, § 123(a)(1), Nov. 8, 1985, 99 Stat. 599; amended Pub. L. 99–433, title I, § 110(g)(4), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284, related to testing requirements for wheeled or tracked armored vehicles.

[§ 2363. Repealed. Pub. L. 102–484, div. D, title XLII, §§ 4224(c), 4271(a)(2), Oct. 23, 1992, 106 Stat. 2683, 2695]

Section, added Pub. L. 99–145, title XIV, § 1457(a), Nov. 8, 1985, 99 Stat. 762, related to encouragement of technology transfer. See section 2514 of this title.

§ 2364. Coordination and communication of defense research activities

(a) COORDINATION OF DEPARTMENT OF DEFENSE TECHNOLOGICAL DATA.—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of technological data—

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; and

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters.

(b) FUNCTIONS OF DEFENSE RESEARCH FACILITIES.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities have broad latitude to choose research and development projects;

(4) that technology position papers prepared by Defense research facilities are readily available to all combatant commands and to contractors who submit bids or proposals for Department of Defense contracts; and

(5) that, in order to promote increased consideration of technological issues early in the development process, any position paper prepared by a Defense research facility on a technological issue relating to a major weapon system, and any technological assessment made by such facility in the case of such component, is made a part of the records considered for the purpose of making milestone O, milestone I, and milestone II decisions.

(c) DEFINITIONS.—In this section:

(1) The term ''Defense research facility'' means a Department of Defense facility which performs or contracts for the performance of—

(A) basic research; or

(B) applied research known as exploratory development.

(2) The term ''milestone O decision'' means the decision made within the Department of Defense that there is a mission need for a new major weapon system and that research and development is to begin to meet such need.

(3) The term ''milestone I decision'' means the decision by an appropriate official of the Department of Defense selecting a new major weapon system concept and a program for demonstration and validation of such concept.

(4) The term ''milestone II decision'' means the decision by an appropriate official of the Department of Defense approving the full-scale development of a new major weapon system.

(Added Pub. L. 99–661, div. A, title II, §234(c)(1), Nov. 14, 1986, 100 Stat. 3848; amended Pub. L. 100–26, §§3(1)(A), 7(a)(9), Apr. 21, 1987, 101 Stat. 273, 278; Pub. L. 100–180, div. A, title XII, §1231(10)(A), (B), Dec. 4, 1987, 101 Stat. 1160.)

AMENDMENTS

1987—Pub. L. 100–26, §3(1)(A), made technical amendment to directory language of section 234(c)(1) of Pub. L. 99–661, which enacted this section.

Pub. L. 100–180, §1231(10)(B), substituted ''defense'' for ''Defense'' in section catchline.

Subsec. (b)(5). Pub. L. 100–180, §1231(10)(A), substituted ''milestone O, milestone I, and milestone II decisions'' for ''milestone O, I, and II decisions''.

Subsec. (c)(2). Pub. L. 100–26, §7(a)(9)(A), substituted ''the decision'' for ''a decision''.

Subsec. (c)(3). Pub. L. 100–26, §7(a)(9)(B), substituted ''the decision by an appropriate official of the Department of Defense selecting'' for ''[a]/[the] selection by an appropriate official of the Department of Defense of''.

Subsec. (c)(4). Pub. L. 100–26, §7(a)(9)(C), substituted ''the decision by an appropriate official of the Department of Defense approving'' for ''approval by an appropriate official of the Department of Defense for''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(1)(A) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

COORDINATION OF HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Section 218(b)(2) of Pub. L. 100–180, as amended by Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that: ''The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall—

''(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

''(B) ensure that such research and development—

''(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (including the national laboratories of the Department of Energy), the National Science Foundation, the National Institute of Standards and Technology, and the National Aeronautics and Space Administration; and

''(ii) complements rather than duplicates such activities.''

COORDINATION OF RESEARCH ACTIVITIES OF DEPARTMENT OF DEFENSE

Section 234(a), (b) of Pub. L. 99–661 provided that:

''(a) PURPOSE.—The purpose of this section is to strengthen coordination among Department of Defense research facilities and other organizations in the Department of Defense.

''(b) FINDINGS.—The Congress finds that centralized coordination of the collection and dissemination of technological data among research facilities and other organizations within the Department of Defense is necessary—

''(1) to ensure that personnel of the Department are currently informed about emerging technology for defense systems; and

''(2) to avoid unnecessary and costly duplication of research staffs and projects.''

[§2365. Repealed. Pub. L. 102–484, div. A, title VIII, §821(c)(1), Oct. 23, 1992, 106 Stat. 2460]

Section, added Pub. L. 99–500, §101(c) [title X, §909(a)(1), formerly §909(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–142, and Pub. L. 99–591, §101(c) [title X, §909(a)(1), formerly §909(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–142, redesignated §909(a)(1), Pub. L. 100–26, §4(b), Apr. 21, 1987, 101 Stat. 274; Pub. L. 99–661, div. A, title IX, formerly title IV, §909(a)(1), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §5(3)(A), Apr. 21, 1987, 101 Stat. 274; Pub. L. 100–456, div. A, title VIII, §802, Sept. 29, 1988, 102 Stat. 2008, required use of competitive prototype program strategy in development of major weapons systems.

§2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary, before the system or program enters engineering and manufacturing development, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters engineering and manufacturing development, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(e) DEFINITIONS.—In this section:

(1) The term ''covered system'' means a vehicle, weapon platform, or conventional weapon system—

(A) that includes features designed to provide some degree of protection to users in combat; and

(B) that is a major system within the meaning of that term in section 2302(5) of this title.

(2) The term ''major munitions program'' means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term ''realistic survivability testing'' means, in the case of a covered system (or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term ''realistic lethality testing'' means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term ''configured for combat'', with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term ''covered product improvement program'' means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(Added Pub. L. 99–500, § 101(c) [title X, § 910(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, and Pub. L. 99–591, § 101(c) [title X, § 910(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143; Pub. L. 99–661, div. A, title IX, formerly title IV, § 910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 802, title XII, § 1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §§ 802(c)(1)–(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101–510, div. A, title XIV,

§ 1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VIII, § 828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103–355, title III, § 3014, Oct. 13, 1994, 108 Stat. 3332.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–355, § 3014(a)(2), (b), substituted ''engineering and manufacturing development'' for ''full-scale entgineering development'' in first sentence and redesignated second sentence as par. (3).

Subsec. (c)(2). Pub. L. 103–355, § 3014(a)(1), (3), added par. (2) and redesignated former par. (2) as (4).

Subsec. (c)(3). Pub. L. 103–355, § 3014(a)(2), redesignated second sentence of par. (1) as par. (3) and substituted ''certification under paragraph (1) or (2)'' for ''such certification''.

Subsec. (c)(4). Pub. L. 103–355, § 3014(a)(1), redesignated par. (2) as (4).

1993—Subsec. (d). Pub. L. 103–160 substituted ''to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives'' for ''to the defense committees of Congress (as defined in section 2362(e)(3) of this title)''.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, § 804(a), see 1989 Amendment note below.

1989—Pub. L. 101–189, § 802(c)(4)(A), substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–189, §§ 802(c)(1)(A), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and'' for ''this section;''.

Subsec. (a)(1)(B). Pub. L. 101–189, §§ 802(c)(1)(B), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.'' for ''this section; and''.

Subsec. (a)(1)(C). Pub. L. 101–189, § 802(c)(1)(C), struck out subpar. (C) which read as follows: ''a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed in accordance with this section.''

Subsec. (b)(2), (3). Pub. L. 101–189, § 802(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a major defense acquisition program, no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (d). Pub. L. 101–189, § 804(b), inserted at end ''Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.''

Subsec. (e)(3) to (8). Pub. L. 101–189, § 802(c)(3), redesignated pars. (4), (5), (6), and (8) as (3), (4), (5), and (6), respectively, and struck out former par. (3) which defined ''major defense acquisition program'' and former par. (7) which defined ''operational test and evaluation''.

1988—Subsec. (a)(2). Pub. L. 100–456 made technical correction to directory language of Pub. L. 100–180, § 802(a)(1)(C). See 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–180, § 802(a)(1), as amended by Pub. L. 100–456, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), and added par. (2).

Subsec. (b)(1). Pub. L. 100–180, § 802(a)(2), inserted ''(including a covered product improvement program)'' after ''system or program'' and ''(or in the product modification or upgrade to the system, munition, or missile)'' after ''or missile''.

Subsec. (b)(2). Pub. L. 100–180, § 802(b), inserted at end ''The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (c). Pub. L. 100–180, § 802(a)(3), (c), (d)(1), designated existing provisions as par. (1), substituted ''missile program, or covered product improvement program'' for ''or missile program'', and inserted at end ''The Secretary shall include with any such certification a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.''

Pub. L. 100–180, § 802(d)(2), designated existing provisions of former subsec. (d) as par. (2) of subsec. (c) and struck out heading of former subsec. (d) ''Waiver in time of war or mobilization''.

Subsec. (d). Pub. L. 100–180, § 802(d)(3), added subsec. (d). Former subsec. (d) redesignated subsec. (c)(2).

Subsec. (e)(1)(B). Pub. L. 100–180, § 1231(11), substituted ''section 2302(5)'' for ''section 2303(5)''.

Subsec. (e)(4). Pub. L. 100–180, § 802(a)(4)(A), (e), inserted ''(or a covered product improvement program for a covered system)'' after ''covered system'', struck out ''and survivability'' after ''for vulnerability'', and substituted ''susceptibility to attack'' for ''operational requirements''.

Subsec. (e)(5). Pub. L. 100–180, § 802(a)(4)(B), inserted ''(or a covered product improvement program for such a program)'' after ''missile program''.

Subsec. (e)(8). Pub. L. 100–180, § 802(a)(4)(C), added par. (8).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1233(*l*)(5) of Pub. L. 100–456 provided that: ''The amendments made by this subsection [amending this section and sections 2435 and 8855 of this title and section 301c of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of Public Law 100–180.''

EFFECTIVE DATE

Section 101(c) [title X, § 910(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 910(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2366 of title 10, United States Code (as added by subsection (a)), shall apply with respect to any decision to proceed with a program beyond low-rate initial production that is made—

''(1) after May 31, 1987, in the case of a decision referred to in subsection (a)(1) or (a)(2) of such section; or

''(2) after the date of the enactment of this Act [Oct. 18, 1986], in the case of a decision referred to in subsection (a)(3) of such section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 139 of this title.

§ 2367. Use of federally funded research and development centers

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of De-

fense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term ''head of an agency'' has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—(1) In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget.

(2) After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99–500, § 101(c) [title X, § 912(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, and Pub. L. 99–591, § 101(c) [title X, § 912(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, § 912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–190, div. A, title II, § 256(a)(1), Dec. 5, 1991, 105 Stat. 1330.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–190 added subsec. (d).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 256(a)(2) of Pub. L. 102–190 provided that:

''(A) Paragraph (1) of subsection (d) of section 2367 of title 10, United States Code, as added by paragraph (1), shall take effect with respect to the budget submitted for fiscal year 1994.

''(B) Paragraph (2) of such subsection shall take effect with respect to fiscal year 1992.''

GAO STUDY; REPORT

Section 101(c) [title X, § 912(b), (c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 912(b), (c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, directed Comptroller General to conduct a study of national defense role of federally funded research and development centers and submit a report to Congress not later than one year after Oct. 18, 1986.

[§ 2368. Repealed. Pub. L. 102–190, div. A, title VIII, § 821(c)(1), Dec. 5, 1991, 105 Stat. 1431]

Section, added Pub. L. 100–456, div. A, title VIII, § 823(a)(1), Sept. 29, 1988, 102 Stat. 2018; amended Pub. L. 101–189, div. A, title VIII, § 841(c)(1), Nov. 29, 1989, 103 Stat. 1514; Pub. L. 102–25, title VII, § 701(g)(1), Apr. 6, 1991, 105 Stat. 115, authorized studies in fields of research and development essential to development of critical technologies. See section 2506 et seq. of this title.

[§ 2369. Repealed. Pub. L. 103–355, title III, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]

Section, added Pub. L. 100–456, div. A, title VIII, § 842(a), Sept. 29, 1988, 102 Stat. 2026; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to program for supervision and coordination of product evaluation activities within the Department of Defense.

§ 2370. Biological Defense Research Program

(a) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report on research, development, test, and evaluation conducted by the Department of Defense during the preceding fiscal year for the purposes of biological defense. The report shall be submitted in both classified and unclassified form and shall be submitted each year in conjunction with the submission of the budget to Congress for the next fiscal year.

(b) CONTENTS OF REPORT.—Each report under this section shall provide the following information:

(1) A description of each biological or infectious agent or toxin that was used in, or that was the subject of, research, development, test, and evaluation conducted for the purposes of biological defense during the fiscal year covered by the report and not previously listed in publications of the Centers for Disease Control (CDC).

(2) A description of the biological properties of each such agent.

(3) A statement of the location of each biological defense research facility and the amount spent by the Department of Defense during the fiscal year covered by the report at each such facility for research, development, test, and evaluation for biological defense research.

(4) A statement of the biosafety level used at each such facility in conducting that research, development, test, and evaluation.

(5) A statement that documentation of annual coordination with local health, fire, and

police officials for the provision of emergency support services has been included in the facility safety plan for each biological defense research facility.

(c) TYPES OF RESEARCH COVERED.—This section applies to all research, development, test, and evaluation activities conducted by the Department of Defense for the purpose of biological defense.

(d) DEFINITIONS.—In this section:

(1) The term ''biosafety level'' means the applicable biosafety level described in the publication entitled ''Biosafety in Microbiological and Biomedical Laboratories'' (CDC–NIH, 1984).

(2) The term ''biological defense research facility'' means a location at which research, development, test, and evaluation for purposes of biological defense involving any biological or infectious agent or toxin (whether or not listed in a CDC publication) is conducted.

(Added Pub. L. 101–510, div. A, title II, §241(a), Nov. 5, 1990, 104 Stat. 1516.)

§2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats

(a) ALLOCATION BETWEEN NEAR-TERM AND OTHER THREATS.—Of the funds appropriated or otherwise made available for any fiscal year for the medical component of the Biological Defense Research Program (BDRP) of the Department of Defense—

(1) not more than 80 percent may be obligated and expended for product development, or for research, development, test, or evaluation, of medical countermeasures against near-term validated biowarfare threat agents; and

(2) not more than 20 percent may be obligated or expended for product development, or for research, development, test, or evaluation, of medical countermeasures against mid-term or far-term validated biowarfare threat agents.

(b) DEFINITIONS.—In this section:

(1) The term ''validated biowarfare threat agent'' means a biological agent that—

(A) is named in the biological warfare threat list published by the Defense Intelligence Agency; and

(B) is identified as a biowarfare threat by the Deputy Chief of Staff of the Army for Intelligence in accordance with Army regulations applicable to intelligence support for the medical component of the Biological Defense Research Program.

(2) The term ''near-term validated biowarfare threat agent'' means a validated biowarfare threat agent that has been, or is being, developed or produced for weaponization within 5 years, as assessed and determined by the Defense Intelligence Agency.

(3) The term ''mid-term validated biowarfare threat agent'' means a validated biowarfare threat agent that is an emerging biowarfare threat, is the object of research by a foreign threat country, and will be ready for weaponization in more than 5 years and less than 10 years, as assessed and determined by the Defense Intelligence Agency.

(4) The term ''far-term validated biowarfare threat agent'' means a validated biowarfare threat agent that is a future biowarfare threat, is the object of research by a foreign threat country, and could be ready for weaponization in more than 10 years and less than 20 years, as assessed and determined by the Defense Intelligence Agency.

(5) The term ''weaponization'' means incorporation into usable ordnance or other militarily useful means of delivery.

(Added Pub. L. 103–160, div. A, title II, §214(a), Nov. 30, 1993, 107 Stat. 1586.)

§2371. Research projects: transactions other than contracts and grants

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) CONDITIONS.—The Secretary of Defense shall ensure that—

(1) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense;

(2) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement

containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction; and

(3) a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(h) ANNUAL REPORT.—Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

(2) The potential military and, if any, commercial utility of such technologies.

(3) The reasons for not using a contract or grant to provide support for such research.

(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).

(i) COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS UNDER STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980.—The Secretary of Defense, in carrying out research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added Pub. L. 101–189, div. A, title II, § 251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–190, div. A, title VIII, § 826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102–484, div. A, title II, § 217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103–35, title II, § 201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title VIII, § 827(b), title XI, § 1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3285.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (i), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103–160, § 827(b)(1)(C), substituted ''section 2358 of this title'' for ''subsection (a)'' in par. (1) and ''subsection (d)'' for ''subsection (e)'' in par. (2).

Pub. L. 103–160, § 827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, § 1182(a)(6), (h), which read as follows: ''The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.''

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (b). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103–160, § 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted ''and development'' after ''research'' in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103–160, § 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (d) and substituted ''section 2358 of this title'' for ''subsection (a)'' and ''research and development'' for ''advanced research''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103–160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted ''research and development are'' for ''advanced research is'', in par. (3) substituted ''research and development'' for ''advanced research'', in par. (4) substituted ''subsection (a)'' for ''subsection (b)'', and in par. (5) substituted ''subsection (d)'' for ''subsection (e)''. Former subsec. (e) redesignated (d).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (f). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f).

Pub. L. 103–160, §1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Pub. L. 103–35 substituted ''granted by section 12'' for ''granted by section 11'' and ''provisions of sections 11 and 12'' for ''provisions of sections 10 and 11''.

1992—Subsec. (g). Pub. L. 102–484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102–190, §826(a), inserted ''and the Secretary of each military department, in carrying out advanced research projects,''.

Subsec. (b)(1). Pub. L. 102–190, §826(b)(1)(A), struck out ''by the Secretary'' after ''transactions entered into''.

Subsec. (b)(2). Pub. L. 102–190, §826(b)(1)(B), substituted ''to the appropriate account'' for ''to the account''.

Subsec. (d). Pub. L. 102–190, §826(b)(2), substituted ''The Secretary of Defense'' for ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 102–190, §826(b)(3), substituted ''separate accounts for each of the military departments and the Defense Advanced Research Projects Agency'' for ''an account'' and ''those accounts'' for ''such account''.

Subsec. (f)(5). Pub. L. 102–190, §826(b)(4), substituted ''each account'' for ''the account''.

Subsec. (g). Pub. L. 102–190, §826(c), struck out subsec. (g) which read as follows: ''The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.''

1990—Subsec. (f). Pub. L. 101–510 substituted ''Committees on'' for ''Committees of'' in introductory provisions.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

AUTHORITY OF ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Section 845 of Pub. L. 103–160 provided that:

''(a) AUTHORITY.—The Director of the Advanced Research Projects Agency may, under the authority of section 2371 of title 10, United States Code, carry out prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

''(b) EXERCISE OF AUTHORITY.—(1) Subsections (c)(2) and (c)(3) of such section 2371, as redesignated by section 827(b)(1)(B), shall not apply to projects carried out under subsection (a).

''(2) The Director shall, to the maximum extent practicable, use competitive procedures when entering into agreements to carry out projects under subsection (a).

''(c) PERIOD OF AUTHORITY.—The authority of the Director to carry out projects under subsection (a) shall terminate 3 years after the date of the enactment of this Act [Nov. 30, 1993].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2358, 2511, 2512, 2519, 2524 of this title.

§2372. Independent research and development and bid and proposal costs: payments to contractors

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed pursuant to subsection (a) shall provide that independent research and development and bid and proposal costs shall be allowable as indirect expenses on covered contracts to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) ADDITIONAL CONTROLS.—Subject to subsection (f), the regulations prescribed pursuant to subsection (a) may include the following provisions:

(1) A limitation on the allowability of independent research and development and bid and proposal costs to work which the Secretary of Defense determines is of potential interest to the Department of Defense.

(2) For each of fiscal years 1993 through 1995, a limitation in the case of major contractors that the total amount of the independent research and development and bid and proposal costs that are allowable as expenses of the contractor's covered segments may not exceed the contractor's adjusted maximum reimbursement amount.

(3) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected Department of Defense future needs; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor's independent research and development programs.

(d) ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—For purposes of subsection (c)(2), the adjusted maximum reimbursement amount for a major contractor for a fiscal year is the sum of—

(1) the total amount of the allowable independent research and development and bid and proposal costs incurred by the contractor during the preceding fiscal year;

(2) 5 percent of the amount referred to in paragraph (1); and

(3) if the projected total amount of the independent research and development and bid and proposal costs incurred by the contractor for such fiscal year is greater than the total amount of the independent research and development and bid and proposal costs incurred by the contractor for the preceding fiscal year, the amount that is determined by multiplying the amount referred to in paragraph (1) by the lesser of—

(A) the percentage by which the projected total amount of such incurred costs for such fiscal year exceeds the total amount of the incurred costs of the contractor for the preceding fiscal year; or

(B) the estimated percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed.

(e) WAIVER OF ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—The Secretary of Defense may waive the applicability of any limitation prescribed under subsection (c)(2) to any contractor for a fiscal year to the extent that the Secretary determines that allowing the contractor to exceed the contractor's adjusted maximum reimbursement amount for such year—

(1) is necessary to reimburse such contractor at least to the extent that would have been allowed under regulations as in effect on December 4, 1991; or

(2) is otherwise in the best interest of the Government.

(f) LIMITATIONS ON REGULATIONS.—Regulations prescribed pursuant to subsection (c) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

(g) ENCOURAGEMENT OF CERTAIN CONTRACTOR ACTIVITIES.—The regulations under subsection (a) shall encourage contractors to engage in research and development activities of potential interest to the Department of Defense, including activities intended to accomplish any of the following:

(1) Enabling superior performance of future United States weapon systems and components.

(2) Reducing acquisition costs and life-cycle costs of military systems.

(3) Strengthening the defense industrial base and the technology base of the United States.

(4) Enhancing the industrial competitiveness of the United States.

(5) Promoting the development of technologies identified as critical under section 2506 of this title.

(6) Increasing the development and promotion of efficient and effective applications of dual-use technologies.

(7) Providing efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(h) MAJOR CONTRACTORS.—A contractor shall be considered to be a major contractor for the purposes of subsection (c) for any fiscal year if for the preceding fiscal year the contractor's covered segments allocated to Department of Defense contracts a total of more than $10,000,000 in independent research and development and bid and proposal costs.

(i) DEFINITIONS.—In this section:

(1) COVERED CONTRACT.—The term ''covered contract'' has the meaning given that term in section 2324(m)[1] of this title.

(2) COVERED SEGMENT.—The term ''covered segment'', with respect to a contractor, means a product division of the contractor that allocated more than $1,000,000 in independent research and development and bid and proposal costs to Department of Defense contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, such term means the contractor as a whole.

(Added Pub. L. 101–510, div. A, title VIII, § 824(a)(1), Nov. 5, 1990, 104 Stat. 1603; amended Pub. L. 102–25, title VII, § 701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102–484, div. A, title X, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–35, title II, § 201(c)(5), May 31, 1993, 107 Stat. 98.)

REFERENCES IN TEXT

Section 2324(m) of this title, referred to in subsec. (i)(1), was repealed by Pub. L. 103–355, title II, § 2101(d), Oct. 13, 1994, 108 Stat. 3308. However, the term ''covered contract'' is defined elsewhere in that section.

AMENDMENTS

1993—Subsec. (g)(5). Pub. L. 103–35 substituted ''section 2506'' for ''section 2522''.

1992—Subsec. (e)(1). Pub. L. 102–484 substituted ''on December 4, 1991'' for ''on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993''.

1991—Pub. L. 102–190 substituted section catchline for one which read ''Independent research and development'' and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102–25 substituted ''subsection (b), including'' for ''subsection (b) or''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 802(e) of Pub. L. 102–190 provided that: ''The amendments made by this section [amending this section and section 2330 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.''

REGULATIONS

Section 802(b) of Pub. L. 102–190 provided that: ''The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.''

STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT

Section 802(c) of Pub. L. 102–190 directed Director of the Office of Technology Assessment to conduct a study to determine effect of regulations prescribed under this section on the achievement of policy stated in subsec. (g) of this section and submit a report containing results of such study to Committees on Armed Services of Senate and House of Representatives not later than Dec. 1, 1995, prior to repeal by Pub. L. 103–160, div. A, title II, § 266, Nov. 30, 1993, 107 Stat. 1611.

§ 2373. Procurement for experimental purposes

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

[1] See References in Text note below.

(b) PROCEDURES.—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies when such purchases are made in quantity.

(Added Pub. L. 103–160, div. A, title VIII, §822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103–337, div. A, title X, §1070(g), Oct. 5, 1994, 108 Stat. 2859.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103–160, §822(c)(2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''chemical activity, and aeronautical supplies,'' for ''and chemical activity supplies,''.

§2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103–355, title VII, §7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS

Sec.
2375. Relationship of commercial item provisions to other provisions of law.
2376. Definitions.
2377. Preference for acquisition of commercial items.

§2375. Relationship of commercial item provisions to other provisions of law

(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 34 of the Office of Federal Procurement Policy Act).

(c) CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.—For provisions relating to exceptions for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(d) of this title.

(Added Pub. L. 103–355, title VIII, §8102, Oct. 13, 1994, 108 Stat. 3390.)

REFERENCES IN TEXT

Section 34 of the Office of Federal Procurement Policy Act, referred to in subsec. (b), is classified to section 430 of Title 41, Public Contracts.

EFFECTIVE DATE

For effective date and applicability of chapter, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§2376. Definitions

In this chapter:

(1) The terms ''commercial item'', ''nondevelopmental item'', ''component'', and ''commercial component'' have the meanings provided in section 4 of the Office of Federal Procurement Policy Act.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103–355, title VIII, §8103, Oct. 13, 1994, 108 Stat. 3390.)

REFERENCES IN TEXT

Section 4 of the Office of Federal Procurement Policy Act, referred to in par. (1), is classified to section 403 of Title 41, Public Contracts.

§2377. Preference for acquisition of commercial items

(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) such requirements are defined so that commercial items or, to the extent that com-

mercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, may be procured to fulfill such requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill such requirements.

(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items in response to the agency solicitations;

(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(Added Pub. L. 103–355, title VIII, § 8104(a), Oct. 13, 1994, 108 Stat. 3390.)

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2381. Contracts: regulations for bids.
[2382. Repealed.]
2383. Procurement of critical aircraft and ship spare parts: quality control.
2384. Supplies: identification of supplier and sources.
2384a. Supplies: economic order quantities.
2385. Arms and ammunition: immunity from taxation.
2386. Copyrights, patents, designs, etc.; acquisition.
2387. Procurement of table and kitchen equipment for officers' quarters: limitation on.
2388. Liquid fuels and natural gas: contracts for storage, handling, or distribution.
[2389. Repealed.]
2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
2391. Military base reuse studies and community planning assistance.
2392. Prohibition on use of funds to relieve economic dislocations.
2393. Prohibition against doing business with certain offerors or contractors.
2394. Contracts for energy or fuel for military installations.
2394a. Procurement of energy systems using renewable forms of energy.
2395. Availability of appropriations for procurement of technical military equipment and supplies.
2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, and pay and supplies of armed forces of friendly foreign countries.
2397. Employees or former employees of defense contractors: reports.
2397a. Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.
2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors.
2397c. Defense contractors: requirements concerning former Department of Defense officials.
2398. Procurement of gasohol as motor vehicle fuel.
2399. Operational test and evaluation of defense acquisition programs.
2400. Low-rate initial production of new systems.
2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft.
2401a. Lease of vessels, aircraft, and vehicles.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
2403. Major weapon systems: contractor guarantees.
2404. Acquisition of petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority.
2405. Limitation on adjustment of shipbuilding contracts.
[2406. Repealed.]
[2407. Renumbered.]
2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.
2409. Contractor employees: protection from reprisal for disclosure of certain information.
[2409a. Repealed.]
2410. Requests for equitable adjustment or other relief: certification.
2410a. Appropriated funds: availability for certain contracts for 12 months.

2410b. Contractor inventory accounting systems: standards.
2410c. Preference for energy efficient electric equipment.
2410d. Subcontracting plans: credit for certain purchases.
[2410e. Repealed.]
2410f. Debarment of persons convicted of fraudulent use of ''Made in America'' labels.
2410g. Advance notification of contract performance outside the United States.
2410h. Acquisition fellowship program.
2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides.
2410k. Defense contractors: listing of suitable employment openings with local employment service office.
2410*l*. Contracts for advisory and assistance services: cost comparison studies.

AMENDMENTS

1994—Pub. L. 103–355, title II, §§2102(b), 2201(b)(2), 2301(c), title III, §3065(a)(2), title VI, §6005(b)(2), Oct. 13, 1994, 108 Stat. 3309, 3318, 3321, 3337, 3365, added item 2401a, struck out items 2382 ''Contract profit controls during emergency periods'', 2406 ''Availability of cost and pricing records'', 2409a ''Communicating with Government officials: defense contractor requirement to prohibit retaliatory personnel actions'', and 2410e ''Contract claims: certification regulations'', and substituted in item 2410 ''Requests for equitable adjustment or other relief: certification'' for ''Contract claims: certification''.

Pub. L. 103–337, div. A, title III, §363(a)(2), Oct. 5, 1994, 108 Stat. 2734, added item 2410*l*.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(3), (c)(3), (4), Nov. 30, 1993, 107 Stat. 1713, 1714, substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' in item 2388, struck out item 2389 ''Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation'', and inserted ''and natural gas'' and ''; acquisition by exchange; sales authority'' in item 2404.

Pub. L. 103–35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, made technical amendment to directory language of Pub. L. 102–484, §4470(a)(2). See 1992 Amendment note below.

Pub. L. 103–35, title II, §201(b)(1)(B), May 31, 1993, 107 Stat. 97, renumbered item 2410c relating to displaced contractor employees as item 2410j and item 2410d relating to defense contractors as item 2410k.

1992—Pub. L. 102–484, div. D, title XLIV, §4470(a)(2), Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103–35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, added item 2410d relating to defense contractors.

Pub. L. 102–484, div. D, title XLIV, §4443(b), Oct. 23, 1992, 106 Stat. 2735, 2753, added item 2410c relating to displaced contractor employees.

Pub. L. 102–484, div. A, title III, §384(a)(1)(B), title VIII, §§808(b)(2), 813(a)(2), 834(a)(2), 840(a)(2), 841(b), title XIII, §1332(b), Oct. 23, 1992, 106 Stat. 2393, 2450, 2453, 2461, 2467, 2468, 2555, added items 2410c to 2410i.

1990—Pub. L. 101–510, div. A, title VIII, §837(a)(2), title XIV, §1484(i)(8), Nov. 5, 1990, 104 Stat. 1619, 1718, struck out item 2407 ''Acquisition of defense equipment under cooperative projects'' and added item 2409a.

1989—Pub. L. 101–189, div. A, title VIII, §§802(a)(2), 803(b), title IX, §933(e), title XVI, §1622(b)(2), Nov. 29, 1989, 103 Stat. 1486, 1488, 1538, 1604, added items 2390, 2399, and 2400 and struck out item 2401a ''Procurement of communications support and related supplies and services''.

1988—Pub. L. 100–456, div. A, title VIII, §§805(a)(2), 834(a)(2), Sept. 29, 1988, 102 Stat. 2010, 2025, added items 2383 and 2410b.

Pub. L. 100–370, §§1(h)(3), 3(b)(2), July 19, 1988, 102 Stat. 848, 855, in item 2389 substituted ''milk: price adjustments; purchases from the Commodity Credit Corporation'' for ''milk; price adjustment'', struck out items 2399 ''Limitation on availability of appropriations to reimburse a contractor for cost of commercial insurance'', and 2400 ''Miscellaneous procurement limitations'', and added items 2410 and 2410a.

1987—Pub. L. 100–180, div. A, title I, §124(b)(2), Dec. 4, 1987, 101 Stat. 1043, substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in item 2400.

1986—Pub. L. 99–661, div. A, title XI, §1103(b)(2)(B), Nov. 14, 1986, 100 Stat. 3963, struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in item 2407.

Pub. L. 99–500, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–160, 1783–162, 1783–164, and Pub. L. 99–591, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–160, 3341–162, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2), Nov. 14, 1986, 100 Stat. 3939, 3941–3943, 3963, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically, substituting ''Availability of cost and pricing records'' for ''Cost and price management'' in item 2406 and adding items 2397b, 2397c, 2408, and 2409.

1985—Pub. L. 99–145, title IX, §§917(b), 923(a)(2), title XI, §1102(b)(2), Nov. 8, 1985, 99 Stat. 690, 697, 712, added items 2397a, 2406, and 2407.

1984—Pub. L. 98–525, title X, §1005(b), title XII, §1235(1), (2), Oct. 19, 1984, 98 Stat. 2579, 2604, substituted in item 2384 ''identification of supplier and sources'' for ''marking with name of contractor'' and added items 2401a, 2384a, and 2402 to 2405.

1983—Pub. L. 98–94, title XII, §§1202(a)(2), 1259(b), Sept. 24, 1983, 97 Stat. 681, 703, struck out item 2390 ''Suggestions for improving procurement policies'', and added item 2401.

1982—Pub. L. 97–321, title VIII, §801(a)(2), Oct. 15, 1982, 96 Stat. 1570, added item 2394a.

Pub. L. 97–295, §1(29)(B), Oct. 12, 1982, 96 Stat. 1294, struck out item 2394 ''Availability of appropriations for procurement of technical military equipment and supplies and the construction of military public works'', added item 2395 ''Availability of appropriations for procurement of technical military equipment and supplies'', redesignated former item 2395 as 2396, and added items 2397, 2398, 2399, and 2400.

Pub. L. 97–258, §2(b)(4)(A), Sept. 13, 1982, 96 Stat. 1052, added items 2394 and 2395.

Pub. L. 97–214, §6(a)(2), July 12, 1982, 96 Stat. 172, added item 2394.

1981—Pub. L. 97–86, title IX, §§911(a)(2), 912(a)(2), 913(a)(2), 914(b), Dec. 1, 1981, 95 Stat. 1122, 1123, 1125, substituted ''Contract profit controls during emergency periods'' for ''Aircraft: contract requirements'' in item 2382 and added items 2391, 2392, and 2393.

1980—Pub. L. 96–513, title V, §511(79), Dec. 12, 1980, 94 Stat. 2927, struck out item 2383 ''Emergency purchases: war material abroad''.

1977—Pub. L. 95–79, title VIII, §815(b), July 30, 1977, 91 Stat. 338, added item 2390.

1966—Pub. L. 89–696, §1(2), Oct. 19, 1966, 80 Stat. 1057, added item 2389.

1958—Pub. L. 85–861, §1(47), Sept. 2, 1958, 72 Stat. 1458, added items 2387 and 2388.

CROSS REFERENCES

Procurement—
Generally, see section 2301 et seq. of this title.
Navy, see section 7521 et seq. of this title.

§ 2381. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), unless exempted therefrom under section 201(a) of that Act (40 U.S.C. 481(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 136; Oct. 19, 1984, Pub. L. 98–525, title XIV, § 1405(35), 98 Stat. 2624; Oct. 13, 1994, Pub. L. 103–355, title I, § 1507, 108 Stat. 3298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2381(a)	5:218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487; Oct. 31, 1951, ch. 654, § 2(4), 65 Stat. 706.
2381(b).	5:218 (less 1st and 2d sentences).	
2381(c)	5:218 (1st 16 words of 1st sentence) [applicability of 5:218 extended to Navy by 5:412b and 41:161 (1st sentence)].	Feb. 19, 1948, ch. 65, § 12 (1st sentence), 62 Stat. 26.

In subsection (a)(1), the word ''may'' is substituted for the words ''is authorized to''. The words ''rules and * * * to be observed'' are omitted as surplusage.

In subsection (a)(2), the word ''undertaking'' is substituted for the words ''to the effect that he or they undertake''. The words ''make a contract'' are inserted for clarity. The words ''in the premises'' are omitted as surplusage. The words ''for the performance of the contract'' are substituted for the words ''to furnish the supplies proposed or to perform the service required''.

In subsection (b), the word ''duly'' is omitted as surplusage. The words ''with good and sufficient security for the proper fulfillment of its terms'' are omitted as covered by subsection (a)(2). The words ''the prescribed'' are inserted before the word ''bond''.

Subsection (b)(1) is substituted for the words ''proceed to contract with some other person to furnish the supplies or perform the services required''.

In subsection (b)(2) the word ''charge'' is substituted for the words ''forthwith cause * * * to be charged''. The words ''a contract is made with the other person'' are substituted for the words ''he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal''. The words ''guarantor or'' are omitted as surplusage. The words ''this difference being'' are substituted for the words ''and the sum may be''. The words ''of debt'' are omitted, since that action no longer exists. The words ''the bidder and his guarantors, jointly or severally'' are substituted for the words ''either or all of such persons''.

In subsection (c), the words ''Proceedings under this section are'' are inserted for clarity. The words ''unless exempted therefrom under section 481(a) of that title'' are inserted to preserve the possibility of exemption of proceedings under the revised section from the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355 substituted ''The Secretary of Defense may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and''

for ''The Secretary of a military department may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and''.

1984—Subsec. (c). Pub. L. 98–525 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40'' and ''section 201(a) of that Act (40 U.S.C. 481(a))'' for ''section 481(a) of this title''.

CROSS REFERENCES

Contracts for national defense, see section 1431 et seq. of Title 50, War and National Defense.

Procurement procedures, see section 251 et seq. of Title 41, Public Contracts.

[§ 2382. Repealed. Pub. L. 103–355, title II, § 2102(a), Oct. 13, 1994, 108 Stat. 3309]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 136; Dec. 1, 1981, Pub. L. 97–86, title IX, § 911(a)(1), 95 Stat. 1120; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, § 1484(b)(3), (f)(2), (g)(2), (h)(3), 104 Stat. 1716, 1717; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, authorized the President, upon declaration of war by Congress or declaration of national emergency by the President or by Congress, to prescribe regulations to control excessive profits on defense contracts during period of such war or national emergency.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2383. Procurement of critical aircraft and ship spare parts: quality control

(a) In procuring any spare or repair part that is critical to the operation of an aircraft or ship, the Secretary of Defense shall require the contractor supplying such part to provide a part that meets all appropriate qualification and contractual quality requirements as may be specified and made available to prospective offerors. In establishing the appropriate qualification requirements, the Secretary of Defense shall use the Department of Defense qualification requirements that were used to qualify the original production part unless the Secretary determines in writing—

(1) that there are other requirements sufficiently similar to those requirements that should be used instead; or

(2) that any or all such requirements are unnecessary.

(b) In this section, the term ''spare or repair part'' means any individual piece, part, sub-

assembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself.

(Added Pub. L. 100–456, div. A, title VIII, § 805(a)(1), Sept. 29, 1988, 102 Stat. 2010; amended Pub. L. 102–190, div. A, title X, § 1061(a)(13), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title II, § 2401, Oct. 13, 1994, 108 Stat. 3324.)

PRIOR PROVISIONS

A prior section 2383, act Aug. 10, 1956, ch. 1041, 70A Stat. 137, permitted Secretary of a military department to make emergency purchases of war material abroad, and provided that such material may be admitted free of duty, prior to repeal by Pub. L. 87–456, title III, § 303(c), May 24, 1962, 76 Stat. 78.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355 amended last sentence generally. Prior to amendment, last sentence read as follows: ''In establishing the appropriate qualification requirements, the Secretary of Defense shall utilize those requirements, if available, which were used to qualify the original production part, unless the Secretary of Defense determines in writing that any or all such requirements are unnecessary.''

1991—Subsec. (b). Pub. L. 102–190 substituted ''means any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself'' for ''has the meaning given such term by section 2323(f) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 805(b) of Pub. L. 100–456 provided that: ''Section 2383 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Sept. 29, 1988].''

§ 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor's identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).[1]

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Oct. 19, 1984, Pub. L. 98–525, title XII, § 1231(a), 98 Stat. 2599; Oct. 18, 1986, Pub. L. 99–500, § 101(c) [title X, § 928(a)], 100 Stat. 1783–82, 1783–156, and Oct. 30, 1986, Pub. L. 99–591, § 101(c) [title X, § 928(a)], 100 Stat. 3341–82, 3341–156; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, § 928(a), 100 Stat. 3936, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, § 3(5), 101 Stat. 273; Oct. 13, 1994, Pub. L. 103–355, title IV, § 4102(d), title VIII, § 8105(b), 108 Stat. 3340, 3392.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2384	10:1207. 34:583.	R.S. 3731.

The words ''Each contractor'' are substituted for the words ''Every person''. The word ''his'' is substituted for the words ''the name of the contractor furnishing such supplies''. The words ''of any kind'' and ''and distinguish [distinguished]'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–355, § 8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

''(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

''(B) is awarded through the use of competitive procedures.''

Subsec. (b)(3). Pub. L. 103–355, § 4102(d), added par. (3).

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) ''(other than a contract described in paragraph (2))'', and adding par. (2).

1984—Pub. L. 98–525 amended section generally, substituting ''identification of supplier and sources'' for ''marking with name of contractor'' in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor's identification number for requirement that each contractor furnishing supplies

[1] So in original. Probably should be preceded by a closing parenthesis.

to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 928(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 928(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1231(b) of Pub. L. 98–525 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98–525, title XII, § 1233(a), Oct. 19, 1984, 98 Stat. 2600.)

EFFECTIVE DATE

Section 1233(b) of Pub. L. 98–525 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2385. Arms and ammunition: immunity from taxation

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2385	5:171w.	Jan. 6, 1951, ch. 1213, subch. VII, § 706, 64 Stat. 1236.

The words ''No * * * may be'' are substituted for the words ''None * * * shall be subject to any''. The words ''by any Act'' are omitted as surplusage.

CROSS REFERENCES

Machine guns and other firearms, exemptions from taxes, see section 5851 et seq. of Title 26, Internal Revenue Code.

Sales to Defense Department of firearms, ammunition, etc., as exempt from taxation, see section 4182 of Title 26.

§ 2386. Copyrights, patents, designs, etc.; acquisition

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Technical data and computer software.

(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Sept. 8, 1960, Pub. L. 86–726, § 3, 74 Stat. 855; Oct. 13, 1994, Pub. L. 103–355, title III, § 3063, 108 Stat. 3337.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2386	31:649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words ''equipment, and materials'' are omitted as covered by the word ''supplies''. The word ''hereafter'' is omitted as executed. The words ''may be used'' are substituted for the words ''shall * * * be available''. The words ''if the acquisition relates to'' are substituted for 31:649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word ''patents'' is substituted for the words ''letters patent''.

AMENDMENTS

1994—Pars. (3), (4). Pub. L. 103–355 added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

''(3) Designs, processes, and manufacturing data.

''(4) Releases, before suit is brought, for past infringement of patents or copyrights.''

1960—Pub. L. 86–726 inserted ''or copyrights'' after ''patents'' in cl. (4).

§ 2387. Procurement of table and kitchen equipment for officers' quarters: limitation on

(a) Except under regulations approved by the Secretary of Defense and providing for uniform practices among the armed forces under his jurisdiction, no part of any appropriation of the Department of Defense may be used to supply or replace table linen, dishes, glassware, silver, and kitchen utensils for use in the residences on

shore, or quarters on shore, of officers of those armed forces.

(b) This section does not apply to—

(1) field messes;

(2) messes temporarily set up on shore for bachelor officers and officers attached to seagoing or district defense vessels;

(3) aviation units based on seagoing vessels;

(4) fleet air bases;

(5) submarine bases; and

(6) landing forces and expeditions.

(Added Pub. L. 85–861, § 1(45), Sept. 2, 1958, 72 Stat. 1458.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2387(a)	5:174e (less words within parentheses).	July 13, 1955, ch. 358, § 614, 69 Stat. 317.
2387(b)	5:174e (words within parentheses).	

In subsection (a), the words ''may be used'' are substituted for the words ''shall be available''. The words ''on account of'' are omitted as surplusage. The words ''under his jurisdiction'' are inserted for clarity, since the Secretary of Defense has no jurisdiction over the Coast Guard when it is not operating as a service in the Navy.

§ 2388. Liquid fuels and natural gas: contracts for storage, handling, or distribution

(a) AUTHORITY TO CONTRACT.—The Secretary of Defense and the Secretary of a military department may each contract for storage facilities for, or the storage, handling, or distribution of, liquid fuels or natural gas.

(b) PERIOD OF CONTRACT.—The period of a contract entered into under subsection (a) may not exceed 5 years. However, the contract may provide options for the Secretary to renew the contract for additional periods of not more than 5 years each, but not for more than a total of 20 years.

(c) OPTION TO PURCHASE FACILITY.—A contract under this section may contain an option for the purchase by the United States of the facility covered by the contract at the expiration or termination of the contract, without regard to subsections (a) and (b) of section 3324 of title 31, and before approval of title to the underlying land by the Attorney General.

(Added Pub. L. 85–861, § 1(46), Sept. 2, 1958, 72 Stat. 1457; amended Pub. L. 97–214, § 10(a)(3), July 12, 1982, 96 Stat. 175; Pub. L. 97–258, § 3(b)(6), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–295, § 1(27), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 101–510, div. A, title XIII, § 1322(a)(6), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, § 825, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 103–355, title III, § 3064, Oct. 13, 1994, 108 Stat. 3337.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2388(a)	50:98i (1st sentence).	Aug. 3, 1956, ch. 939, § 416, 70 Stat. 1018.
2388(b)	50:98i (2d sentence).	
2388(c)	50:98i (less 1st and 2d sentences and proviso of last sentence).	
2388(d)	50:98i (proviso of last sentence).	

In subsection (b), the words ''section applies only'' are substituted for the words ''authority is limited''. The word ''standards'' is substituted for the word ''criteria''.

In subsection (c), the words ''A contract under this section'' are substituted for the words ''Such contracts''. The last 33 words are substituted for 50:98i (28 words before proviso of last sentence).

1982 ACT

In 10:2388(c), the title 31 citation is substituted on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355 substituted ''liquid fuels or natural gas'' for ''liquid fuels and natural gas''.

1993—Pub. L. 103–160, § 825(b), substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' as section catchline.

Subsecs. (a), (b). Pub. L. 103–160, § 825(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) The Secretary of a military department may contract for the storage, handling, and distribution of liquid fuels for periods of not more than five years, with options to renew for additional periods of not more than five years each, but not for more than a total of 20 years.

''(b) This section applies only to facilities that conform to standards prescribed by the Secretary of Defense for protection, including dispersal, and that are in a program approved by the Secretary of Defense for the protection of petroleum facilities.''

Subsec. (c). Pub. L. 103–160, § 825(a)(2), inserted heading.

1990—Subsec. (d). Pub. L. 101–510 struck out subsec. (d) which read as follows: ''The Secretary concerned shall report to the Committees on Armed Services of the Senate and the House of Representatives the terms of the contracts made under this section and the names of the contractors. The reports shall be made at such times and in such form as may be agreed upon by the Secretary and those Committees.''

1984—Subsec. (c). Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (c). Pub. L. 97–295, § 1(27), substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'', clarifying the ambiguity created by previous amendments by Pub. L. 97–214 and Pub. L. 97–258.

Pub. L. 97–258, § 3(b)(6), directed the substitution of ''section 3324(a) and (b) of title 31'' for ''section 529 of title 31'', which could not be executed in view of prior substitution of language by Pub. L. 97–214.

Pub. L. 97–214, § 10(a)(3), substituted ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' for ''section 4774(d) or 9774(d) of this title, section 529 of title 31, or section 259 or 267 of title 40,''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

PURCHASES OF GASOHOL AS FUEL FOR MOTOR VEHICLES

Pub. L. 96–107, title VIII, § 815, Nov. 9, 1979, 93 Stat. 817, which had authorized the Secretary of Defense to buy domestically produced alcohol and gasohol for use as fuel in Department of Defense motor vehicles, was repealed and reenacted as section 2398 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

[§ 2389. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(4), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 89–696, § 1(1), Oct. 19, 1966, 80 Stat. 1056; amended Pub. L. 100–370, § 1(h)(1), July 19, 1988, 102 Stat. 847, related to purchases from Commodity Credit Corporation and price adjustments for contracts for procurement of milk.

§ 2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense article designated or otherwise classified as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

(2) In this section, the term ''decrement stock'' means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.

(Added Pub. L. 95–485, title VIII, § 815(a), Oct. 20, 1978, 92 Stat. 1625, § 975; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2390, Pub. L. 101–189, div. A, title XVI, § 1622(b)(1), Nov. 29, 1989, 103 Stat. 1604.)

PRIOR PROVISIONS

A prior section 2390, added Pub. L. 95–79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337; amended Pub. L. 96–470, title I, § 104(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 96–513, title V, § 511(80), Dec. 12, 1980, 94 Stat. 2927, directed Secretary of Defense to request each commissioned officer, and each civilian employee above grade GS–12, who was scheduled for retirement and who was or had been at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, prior to repeal by Pub. L. 98–94, title XII, § 1259(a), Sept. 24, 1983, 97 Stat. 703.

AMENDMENTS

1989—Pub. L. 101–189 renumbered section 975 of this title as this section.

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2391. Military base reuse studies and community planning assistance

(a) REUSE STUDIES.—Whenever the Secretary of Defense or the Secretary of the military department concerned publicly announces that a military installation is a candidate for closure or that a final decision has been made to close a military installation and the Secretary of Defense determines, because of the location, facilities, or other particular characteristics of the installation, that the installation may be suitable for some specific Federal, State, or local use potentially beneficial to the Nation, the Secretary of Defense may conduct such studies, including the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in connection with such installation and such potential use as may be necessary to provide information sufficient to make sound conclusions and recommendations regarding the possible use of the installation.

(b) ADJUSTMENT AND DIVERSIFICATION ASSISTANCE.—(1) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments in planning community adjustments and economic diversification required (A) by the proposed or actual establishment, realignment, or closure of a military installation, (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, (C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a community, (D) by the encroachment of a civilian community on a military installation, or (E) by the closure or the significantly reduced operations of a defense facility as the result of the merger, acquisition, or consolidation of the defense contractor operating the defense facility, if the Secretary determines that an action described in clause (A), (B), (C), or (E) is likely to have a direct and significantly adverse consequence on the affected community or, in the case of an action described in clause (D), if the Secretary determines that the encroachment of the civilian community is likely to impair the continued operational utility of the military installation.

(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of (i) more than 2,000 military, civilian, and contractor Department of Defense personnel, or (ii) more military, civilian, and contractor Department of Defense personnel than the number equal to 10 percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

(3) In the case of a publicly announced planned reduction in Department of Defense spending, the closure or significantly reduced operations

of a defense facility, the cancellation or termination of a Department of Defense contract, or the failure to proceed with a previously approved major defense acquisition program, assistance may be made under paragraph (1) only if the reduction, cancellation, termination, or failure will have a direct and significant adverse impact on a community and will result in the loss of—

(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

(B) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

(C) one percent of the total number of civilian jobs in that area.

(4)(A) In the case of a State or local government eligible for assistance under paragraph (1), the Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist the State or local government to carry out a community adjustment and economic diversification program (including State industrial extension or modernization efforts to facilitate the economic diversification of defense contractors and subcontractors) in addition to planning such a program.

(B) The Secretary shall establish criteria for the selection of community adjustment and economic diversification programs to receive assistance under subparagraph (A). Such criteria shall include a requirement that the State or local government agree—

(i) to provide not less than 10 percent of the funding for the program from non-Federal sources;

(ii) to provide business planning and market exploration services under the program to defense contractors and subcontractors that seek modernization or diversification assistance; and

(iii) to provide training, counseling, and placement services for members of the armed forces and dislocated defense workers.

(C) The Secretary shall carry out this paragraph in coordination with the Secretary of Commerce.

(5) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in planning community adjustments and economic diversification even though the State or local government is not currently eligible for assistance under paragraph (1) if the Secretary determines that a substantial portion of the economic activity or population of the geographic area to be subject to the advance planning is dependent on defense expenditures.

(6) Funds provided to State and local governments and regional organizations under this section may be used as part or all of any required non-Federal contribution to a Federal grant-in-aid program for the purposes stated in paragraph (1).

(7) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

(A) Before the end of the 7-day period beginning on the date on which the Secretary receives the application, in the case of an application for a planning grant.

(B) Before the end of the 30-day period beginning on such date, in the case of an application for assistance to carry out a community adjustments and economic diversifications program.

(8)(A) In attempting to complete consideration of applications within the time period specified in paragraph (7), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (f)(1).

(B) If an application under paragraph (7) is rejected by the Secretary, the Secretary shall promptly inform the State or local government of the reasons for the rejection of the application.

(c) ANNUAL REPORT.—The Secretary of Defense shall submit a report not later than December 1 of each year to the Committees on Armed Services of the Senate and House of Representatives concerning the operation of this section during the preceding fiscal year. Each such report shall identify each State, unit of local government, and regional organization that received a grant under this section during such fiscal year and the total amount granted under this section during such year to each such State, unit of local government, and regional organization.

(d) DEFINITIONS.—In this section:

(1) The term ''military installation'' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

(2) The term ''defense facility'' means any private facility producing goods or services pursuant to a defense contract.

(3) The terms ''community adjustment'' and ''economic diversification'' include the development of feasibility studies and business plans for market diversification within a community adversely affected by an action described in clause (A), (B), (C), or (E) of subsection (b)(1) by adversely affected businesses and labor organizations located in the community.

(e) ASSISTANCE SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to make grants under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 97–86, title IX, §912(a)(1), Dec. 1, 1981, 95 Stat. 1122; amended Pub. L. 98–115, title VIII, §808, Oct. 11, 1983, 97 Stat. 789; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–456, div. B, title XXVIII, §2805, Sept. 29, 1988, 102 Stat. 2116; Pub. L. 101–510, div. D, title XLI, §4102(b), Nov. 5, 1990, 104 Stat. 1851; Pub. L. 102–25, title VII, §701(j)(3), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(28), div. D, title XLIII, §4301(a)–(c), Oct. 23, 1992, 106 Stat.

2500, 2696, 2697; Pub. L. 103–35, title II, § 202(a)(15), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. B, title XXIX, § 2913, Nov. 30, 1993, 107 Stat. 1925; Pub. L. 103–337, div. A, title XI, §§ 1122(a), 1123(a), (b), Oct. 5, 1994, 108 Stat. 2870, 2871.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(5) to (7). Pub. L. 103–337, § 1123(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 103–337, § 1123(a)(1), (b), redesignated par. (7) as (8) and substituted ''paragraph (7)'' for ''paragraph (6)'' in subpars. (A) and (B).

Subsec. (d)(3). Pub. L. 103–337, § 1122(a), added par. (3).

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 4301(b)(1)(C). See 1992 Amendment note below.

Subsec. (b)(6), (7). Pub. L. 103–160 added pars. (6) and (7).

1992—Subsec. (a). Pub. L. 102–484, § 4301(c)(1), inserted heading.

Subsec. (b). Pub. L. 102–484, § 4301(c)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102–484, § 4301(b)(1), as amended by Pub. L. 103–35, substituted '', (D)'' for '', or (D)'', substituted ''(C), or (E)'' for ''or (C)'', and inserted cl. (E) before first reference to ''if the Secretary''.

Pub. L. 102–484, § 1052(28), substituted ''publicly announced'' for ''publicly-announced''.

Subsec. (b)(3). Pub. L. 102–484, § 4301(b)(2), inserted ''the closure or significantly reduced operations of a defense facility,'' after ''Defense spending,'' in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 102–484, § 4301(a)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 102–484, § 4301(c)(3), inserted heading.

Subsec. (d). Pub. L. 102–484, § 4301(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'military installation' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.''

Subsec. (e). Pub. L. 102–484, § 4301(c)(4), inserted heading.

1991—Subsec. (b)(3). Pub. L. 102–25 substituted ''publicly announced'' for ''publicly-announced'' and inserted a comma after ''only if the reduction''.

1990—Subsec. (b)(3) to (6). Pub. L. 101–510 added par. (3), redesignated par. (5) as (4), and struck out former pars. (3), (4), and (6), which read as follows:

''(3) In the case of the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, assistance may be made under paragraph (1) only if the cancellation, termination, or failure to proceed involves the loss of 2,500 or more full-time Department of Defense and contractor employee positions in the locality of the affected community.

''(4) In the case of a publicly-announced planned major reduction in Department of Defense spending that will directly and adversely affect a community, assistance may be made under paragraph (1) only if the publicly-announced planned major reduction will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a five-year period in the locality of the affected community.

''(6) Not more than $2,000,000 in assistance may be provided under this subsection in any fiscal year.''

1988—Subsec. (b)(1). Pub. L. 100–456, § 2805(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments, and regional organizations composed of State and local governments, in planning community adjustments required (A) by the proposed or actual establishment, realignment, or closure of a military installation, or (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, if the Secretary of Defense determines that the action is likely to impose a significant impact on the affected community.''

Subsec. (b)(4) to (6). Pub. L. 100–456, § 2805(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1983—Subsec. (b)(2). Pub. L. 98–115 substituted ''2,000'' for ''2,500''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2702 of title XXVII of div. B of Pub. L. 100–456 provided that: ''Except as otherwise specifically provided, this division [amending this section and sections 2662, 2672, 2809, and 2828 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1988, or the date of enactment of this Act [Sept. 29, 1988], whichever is later.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 808 of Pub. L. 98–115 provided that the amendment made by that section is effective Oct. 1, 1983.

ADVANCE ADJUSTMENT PLANNING

Section 4301(d) of Pub. L. 102–484 authorized Secretary of Defense, during fiscal year 1993, to make grants and other assistance available under 10 U.S.C. 2391(b) to assist a State or local government in planning community adjustments and economic diversification even though the State or local government currently failed to meet the criteria for assistance under such section if the Secretary determined that a substantial portion of the economic activity or population of the geographic area to be subjected to the adjustment or diversification planning was dependent on Department of Defense expenditures.

EFFECT OF 1992 AMENDMENTS ON EFFORTS OF ECONOMIC DEVELOPMENT ADMINISTRATION

Section 4301(f) of Pub. L. 102–484 provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note above] is intended to replace the efforts of the economic development program administered by the Economic Development Administration of the Department of Commerce.''

PILOT PROJECT TO IMPROVE ECONOMIC ADJUSTMENT PLANNING

Section 4302 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title XIII, § 1323(a), Nov. 30, 1993, 107

Stat. 1790, authorized Secretary of Defense, during fiscal years 1993 and 1994, to conduct a pilot project to examine methods to improve the provision of economic adjustment and diversification assistance under 10 U.S.C. 2391(b)(1) to State and local governments adversely affected by the closure of military installations, the cancellation or completion of defense contracts, or reductions in defense spending.

DONATION OF REAL PROPERTY TO NONPROFIT ENTITIES PROVIDING SUPPORT TO CHILDREN WITH LIFE-THREATENING DISEASES

Pub. L. 102–172, title VIII, § 8149, Nov. 26, 1991, 105 Stat. 1214, provided that:

''(a) The Secretary of Defense, during the current fiscal year or at any time thereafter, may make a donation to an entity described in subsection (b) of a parcel of real property (including structures on such property) under the jurisdiction of the Secretary that is not currently required for the needs of the Department and that the Secretary determines is needed and appropriate for the activities of that entity.

''(b) A donation under subsection (a) may be made to a nonprofit entity which provides medical, educational, and emotional support in a recreational setting to children with life-threatening diseases and their families.''

DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION

Pub. L. 101–510, div. D, Nov. 5, 1990, 104 Stat. 1848, as amended by Pub. L. 102–190, div. A, title X, § 1062(c), Dec. 5, 1991, 105 Stat. 1475; Pub. L. 102–484, div. D, title XLII, § 4212(b), Oct. 23, 1992, 106 Stat. 2664, provided that:

''SEC. 4001. SHORT TITLE

''This division may be cited as the 'Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990'.

''SEC. 4002. FINDINGS AND POLICY

''(a) FINDINGS.—Congress makes the following findings:

''(1) There are likely to be significant reductions in the programs, projects, and activities of the Department of Defense during the first several fiscal years following fiscal year 1990.

''(2) Such reductions will adversely affect the economies of many communities in the United States and small businesses and civilian workers throughout the United States.

''(b) POLICY.—In view of the findings expressed in subsection (a), it is the policy of the United States that—

''(1) assistance be provided under existing planning assistance programs and economic adjustment assistance programs of the Federal Government to substantially and seriously affected communities, businesses, and workers to the extent necessary to facilitate an orderly transition for such communities, small businesses, and workers from economic reliance on Department of Defense spending to economic reliance on other sources of business, employment, and revenue; and

''(2) funding for such programs be increased by amounts necessary to meet the needs of such communities, small businesses, and workers without reducing the funding that would otherwise be available under those programs by reason of causes unrelated to the reductions referred to in subsection (a)(1).

''SEC. 4003. DEFINITIONS

''For purposes of this division:

''(1) The term 'major defense contract or subcontract' means—

''(A) any defense contract in an amount not less than $5,000,000 (without regard to the date on which the contract was awarded); and

''(B) any subcontract which—

''(i) is entered into in connection with a contract (without regard to the effective date of the subcontract); and

''(ii) involves not less than $500,000.

''(2) The term 'Economic Adjustment Committee' or 'Committee' means the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

''(3) The term 'defense facility' means any private or government facility producing goods or services pursuant to a defense contract.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, or homeport facility for any ship in the United States, or any other facility under the jurisdiction of a military department located in the United States.

''(5) The term 'substantially and seriously affected' means—

''(A) when such term is used in conjunction with the term 'community', a community—

''(i) which has within its administrative and political jurisdiction one or more military installations or defense facilities or which is economically affected by proximity to a military installation or defense facility;

''(ii) in which the actual or threatened curtailment, completion, elimination, or realignment of a defense contract results in a workforce reduction of—

''(I) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

''(II) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

''(III) one percent of the total number of civilian jobs in that area; and

''(iii) which establishes, by evidence, that any workforce reduction referred to in clause (ii) occurred as a direct result of changes in Department of Defense requirements or programs;

''(B) when such term is used in conjunction with the term 'businesses' any business which—

''(i) holds a major defense contract or subcontract (or held such contract or subcontract before a reduction in the defense budget);

''(ii) experiences a reduction, or the threat of a reduction, of—

''(I) 25 percent or more in sales or production; or

''(II) 80 percent or more of the workforce of such business in any division of such business or at any plant or other facility of such business; and

''(iii) establishes, by evidence, that the reductions referred to in clause (ii) occurred as a direct result of a reduction in the defense budget; and

''(C) when such term is used in conjunction with the term 'group of workers', any group of 100 or more workers at a defense facility who are (or who are threatened to be), eligible to participate in the defense conversion adjustment program under section 325 of the Job Training Partnership Act [29 U.S.C. 1662d] (as added by section 4202 of this division).

''SEC. 4004. CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE

''(a) TERMINATION OR ALTERATION PROHIBITED.—The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be terminated and the duties of the Committee may not be significantly altered unless specifically authorized by a law.

''(b) CHAIRMAN.—Until October 1, 1997, the Secretary of Defense shall be the chairman of the Committee. After that, the chairmanship shall rotate annually among the Secretary of Defense, Secretary of Labor, and the Secretary of Commerce.

''(c) EXECUTIVE COUNCIL.—Until October 1, 1997, the National Defense Technology and Industrial Base Council shall function as an Executive Council of the Com-

mittee. Under the direction of the chairman of the Committee, the Executive Council shall develop policies and procedures to ensure that communities, businesses, and workers substantially and seriously affected by reductions in defense expenditures are advised of the assistance available to such communities, businesses, and workers under programs administered by the departments and agency comprising the Council.

''(d) DUTIES OF COMMITTEE.—The Economic Adjustment Committee shall—

''(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs;

''(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts; and

''(3) submit to the President and Congress, not later than December 1, 1991, and each December 1 thereafter, a report that—

''(A) describes Federal economic adjustment programs available to communities, businesses, and groups of workers;

''(B) describes the implementation of defense economic adjustment assistance during the preceding fiscal year; and

''(C) specifies the number of communities, businesses, and workers affected by defense budget reductions during the preceding fiscal year and such number assisted by Federal economic adjustment programs during that fiscal year.

''TITLE XLI—ECONOMIC ADJUSTMENT PLANNING

''SEC. 4101. NOTIFICATION

''(a) IN GENERAL.—The Chairman of Economic Adjustment Committee shall establish procedures to ensure that the head of the appropriate Federal agencies promptly notify the appropriate official or other person or party described in subsection (b) with respect to any community, business, or group of workers that may be substantially and seriously affected as a result of—

''(1) the annual budget of the President submitted to Congress pursuant to section 1105 of title 31, United States Code, and any longer-term guidance document of the Secretary of Defense;

''(2) the public announcement of the realignment or closure of a military installation or defense facility; or

''(3) the cancellation or curtailment of a major defense contract.

''(b) PERSONS TO RECEIVE NOTICE.—The officials, persons, and other parties referred to in subsection (a) are—

''(1) the chief elected executive official of an affected State;

''(2) the mayor of an affected city;

''(3) the executive or other appropriate representative of any other affected political subdivision of a State; and

''(4) the head of a national or international labor organization, the headquarters of which is located in the United States, which represents a substantially and seriously affected group of workers.

''(c) BENEFIT INFORMATION REQUIRED TO ACCOMPANY NOTICE.—Each notice under subsection (a) shall contain information describing Federal economic adjustment programs available to communities, businesses, and groups of workers.

''(d) NOTIFICATION OF COMMUNITIES AFFECTED BY DEFENSE REALIGNMENT BEFORE DATE OF ENACTMENT.—The information provided under subsection (a) shall include information regarding actions referred to in such subsection which were—

''(1) proposed in the budget of the President which was submitted to Congress during the period beginning on January 1, 1990, and ending on the date of the enactment of this Act [Nov. 5, 1990]; or

''(2) otherwise announced during such period.

''SEC. 4102. ECONOMIC ADJUSTMENT PLANNING ASSISTANCE THROUGH THE DEPARTMENT OF DEFENSE

''(a) IN GENERAL.—Any substantially and seriously affected community shall be eligible for economic adjustment planning assistance through the Office of Economic Adjustment in the Department of Defense under subsection (b) of section 2391 of title 10, United States Code, subject to subsection (e) of such section. Such assistance shall be provided in accordance with the standards, procedures, and priorities established by the Committee under this division.

''(b) [Amended section 2391(b) of this title.]

''SEC. 4103. COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE THROUGH THE ECONOMIC DEVELOPMENT ADMINISTRATION

''(a) IN GENERAL.—A community that has been determined by the Economic Development Administration of the Department of Commerce or the Office of Economic Adjustment of the Department of Defense, in accordance with the standards and procedures established by the Economic Adjustment Committee, to be a substantially and seriously affected community shall be eligible for economic adjustment assistance authorized under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], subject to the availability of appropriations for such purpose and subject to meeting the eligibility requirements of such title.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for fiscal year 1991 $50,000,000 for purposes of carrying out subsection (a). Any amount appropriated pursuant to this subsection shall remain available until expended.

''TITLE XLII—ADJUSTMENT ASSISTANCE FOR EMPLOYEES

''SEC. 4201. SECRETARY OF DEFENSE NOTICE REQUIREMENT

''(a) INFORMATION TO BE PROVIDED.—The Secretary of Defense shall—

''(1) provide timely information to the Secretary of Labor on—

''(A) any proposed closure of, or substantial reduction in, military installations; and

''(B) any proposed cancellation of, or reduction in, any contract for products or services for the Department of Defense,

if the proposed closure, cancellation, or reduction will have a substantial impact on employment;

''(2) when feasible, identify the location at which employment which will be affected by such closure, cancellation, or reduction; and

''(3) provide to the Secretary of Labor information with respect to such proposed closure, cancellation, or reduction.

''(b) NOTIFICATION TO GOVERNOR OF STATE CONCERNED.—If the Secretary of Labor receives information under subsection (a), the Secretary shall notify the Governor of each State in which such proposed closure, cancellation, or reduction will occur pursuant to guidelines established by the Economic Adjustment Committee to avoid duplicative notification.

''SEC. 4202. DEFENSE CONVERSION ADJUSTMENT PROGRAM

''[Enacted section 1662d of Title 29, Labor.]

''SEC. 4203. AUTHORIZATION OF APPROPRIATIONS

''(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Defense $150,000,000 for fiscal year 1991 to carry out section 4201 and the amendment made by section 4202. Amounts appropriated pursuant to this subsection shall remain available until expended.

''(b) ADMINISTRATIVE EXPENSES.—Of amounts appropriated pursuant to this section, not more than five percent may be retained by the Secretary of Labor for

the administration of the activities authorized by the amendment made by section 4202.

''TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS

''SEC. 4301. EXPANSION OF SMALL BUSINESS LOAN PROGRAM

''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the President, acting with the assistance of the Committee and after consulting experts in government and the private sector, shall transmit to the Congress recommendations regarding ways that assistance provided pursuant to the business loan program under section 7(a) of the Small Business Act of 1958 [15 U.S.C. 636(a)] may be used to respond to the consequences of defense budget reductions.

''SEC. 4302. ECONOMIC PLANNING ASSISTANCE FOR EXCEPTIONAL PROJECTS

''(a) ASSISTANCE AUTHORIZED.—The Economic Development Administration, in the case of assistance under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], and the Office of Economic Adjustment, in the case of planning assistance under section 2391(b) of title 10, United States Code, may award planning assistance under those programs to any substantially and seriously affected community, on behalf of a business, group of businesses, or group of workers, if such planning funds are determined by the agency concerned to be necessary and appropriate as a catalyst for projects which the agency determines, on a case-by-case basis, have exceptional promise for achieving the objectives of this division.

''(b) CONDITIONS ON ASSISTANCE.—Awards under this section shall be subject to the availability of appropriations for such purpose and shall be made in accordance with any other applicable provisions of law.

''SEC. 4303. EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION

''(a) EXPORT-IMPORT BANK.—

''(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

''(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee and after consulting the Board of Directors of the Export-Import Bank of the United States and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for increasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

''(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

''(A) was substantially and seriously affected by defense budget reductions; and

''(B) is in transition from defense to nondefense production.

''(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act [15 U.S.C. 631 et seq.], title VIII of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, see Short Title of 1988 Amendments note set out under section 631 of Title 15, Commerce and Trade], or any program referred to in section 4301 to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced or provided by any business or group of workers which—

''(1) has been substantially and seriously affected by defense budget reductions; and

''(2) is in transition from defense to nondefense production.

''(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

''(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1); and

''(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

''(d) REPORTING.—The annual reports made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report under section 4004(c)(3) of this division shall include a description of the extent to which the bank and the Administrator are—

''(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected by defense budget reductions; and

''(2) coordinating and integrating export support and financing activities with other Federal agencies.

''SEC. 4304. BENEFIT INFORMATION FOR BUSINESSES

''(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

''(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.''

COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Section 2819 of Pub. L. 100–456, as amended by Pub. L. 101–510, div. B, title XXIX, §2922(a), Nov. 5, 1990, 104 Stat. 1820, provided that:

''(a) ESTABLISHMENT OF COMMISSION.—Within 30 days after the date of the enactment of this Act [Sept. 29, 1988], the President shall establish a Commission on Alternative Utilization of Military Facilities. The Commission shall be composed of representatives from the Department of Defense, the Bureau of Prisons of the Department of Justice, the National Institute on Drug

Abuse of the Department of Health and Human Services, and the General Services Administration.

''(b) REPORT REQUIREMENTS.—The Commission shall, on a biannual basis—

''(1) prepare a report listing active and nonactive military facilities that the Secretary of Defense has identified as subjects for closure, as being underutilized in whole or part, or as being excess to the needs of the Department of Defense;

''(2) identify those facilities, or parts of facilities, that could be effectively utilized or renovated to serve as Federal confinement or correctional facilities including shock incarceration facilities;

''(3) identify those facilities, or parts of facilities, that could be effectively utilized or renovated to serve as drug treatment facilities for nonviolent drug abusers;

''(4) identify those facilities, or parts of facilities, that could be effectively utilized or renovated to meet the needs of States and local jurisdictions for confinement or correctional facilities; and

''(5) transmit a list of such facilities to the President and to the Congress.

''(c) DEADLINE FOR REPORTS.—The first report required by subsection (b) shall be submitted to the President and Congress not later than October 1, 1988. Subsequent reports under such subsection shall be submitted not later than September 1 of every second year after submission of the first report through fiscal year 1996.''

[Section 2922(b) of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title X, § 1062(b), Dec. 5, 1991, 105 Stat. 1475, provided that: ''The amendments made by subsection (a) [amending section 2819 of Pub. L. 100–456 set out above] shall take effect with respect to the first report required to be submitted under section 2819 of the National Defense Authorization Act, Fiscal Year 1989 [Pub. L. 100–456], after September 30, 1990.'']

SUBMISSION DATE FOR FIRST REPORT

Section 912(c) of Pub. L. 97–86 required the first report under subsec. (c) of this section to be submitted not later than Dec. 1, 1982.

EX. ORD. NO. 12682. COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Ex. Ord. No. 12682, July 7, 1989, 54 F.R. 29315, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2819 of the Military Construction Authorization Act, 1989 (Public Law 100–456) [10 U.S.C. 2391 note], it is hereby ordered as follows:

SECTION 1. (a) I hereby establish the Commission on Alternative Utilization of Military Facilities (''Commission'').

(b) The Commission shall consist of a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Federal Bureau of Prisons designated by the Attorney General, a representative of the National Institute on Drug Abuse designated by the Secretary of Health and Human Services, a representative of the General Services Administration designated by the Administrator of General Services, a representative of the Department of Housing and Urban Development designated by the Secretary of Housing and Urban Development, and a representative of the Office of National Drug Control Policy designated by the Director of the Office of National Drug Control Policy. The representative of the Department of Defense shall chair the Commission.

(c) The Secretary of Defense shall provide such personnel and support to the Commission as the Secretary determines is necessary to accomplish its mission.

SEC. 2. (a) Subject to subsection (b), the Secretary of Defense shall prepare and submit to the Commission reports listing active and nonactive military facilities that are underutilized in whole or in part or otherwise excess to the needs of the Department of Defense.

(b) The first such report shall be prepared and submitted as soon as possible for inclusion in the first report of the Commission. The second report shall be prepared and submitted on January 30, 1990, and succeeding reports shall be prepared and submitted every other year commencing on January 30, 1992, and continuing until January 30, 1996.

SEC. 3. (a) Subject to subsection (b), the Commission shall submit a report to the President and then to the Congress that identifies those facilities, or parts of facilities, from the list submitted by the Secretary of Defense under Section 2 that could be effectively utilized or renovated to serve as:

(1) minimum security facilities for nonviolent prisoners,

(2) drug treatment facilities for nonviolent drug abusers, and

(3) facilities to assist the homeless.

(b) The first report of the Commission shall be submitted to the President and then to the Congress by September 1, 1989. The second, and succeeding reports of the Commission, shall be submitted to the President and then to the Congress no later than September 1, 1990, and every second year through September 1, 1996.

GEORGE BUSH.

EX. ORD. NO. 12788. DEFENSE ECONOMIC ADJUSTMENT PROGRAM

Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510 [set out above], and to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Function of the Secretary of Defense.* The Secretary of Defense shall, through the Economic Adjustment Committee, design and establish a Defense Economic Adjustment Program.

SEC. 2. *Purpose of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall assist in the alleviation of serious community socioeconomic effects that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations.

SEC. 3. *Functions of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall:

(a) Identify problems of States, regions, metropolitan areas, or communities that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations and that require Federal assistance;

(b) Use and maintain a uniform socioeconomic impact analysis to justify the use of Federal economic adjustment resources, prior to particular realignments;

(c) Apply consistent policies, practices, and procedures in the administration of Federal programs that are used to assist Defense-affected States, regions, metropolitan areas, and communities;

(d) Identify and strengthen existing agency mechanisms to coordinate employment opportunities for displaced agency personnel;

(e) Identify and strengthen existing agency mechanisms to improve reemployment opportunities for dislocated Defense industry personnel;

(f) Assure timely consultation and cooperation with Federal, State, regional, metropolitan, and community officials concerning Defense-related impacts on Defense-affected communities' problems;

(g) Assure coordinated interagency and intergovernmental adjustment assistance concerning Defense impact problems;

(h) Prepare, facilitate, and implement cost-effective strategies and action plans to coordinate interagency and intergovernmental economic adjustment efforts;

(i) Encourage effective Federal, State, regional, metropolitan, and community cooperation and concerted involvement of public interest groups and private sector organizations in Defense economic adjustment activities;

(j) Serve as a clearinghouse to exchange information among Federal, State, regional, metropolitan, and community officials involved in the resolution of community economic adjustment problems. Such information may include, for example, previous studies, technical information, and sources of public and private financing;

(k) Assist in the diversification of local economies to lessen dependence on Defense activities;

(*l*) Encourage and facilitate private sector interim use of lands and buildings to generate jobs as military activities diminish; and,

(m) Develop ways to streamline property disposal procedures to enable Defense-impacted communities to acquire base property to generate jobs as military activities diminish.

SEC. 4. *Economic Adjustment Committee.*

(a) *Membership*. The Economic Adjustment Committee (''Committee'') shall be composed of the following individuals, or a designated principal deputy of these individuals, and such other individuals from the executive branch as the President may designate. Such individuals shall include the:

(1) Secretary of Agriculture;
(2) Attorney General;
(3) Secretary of Commerce;
(4) Secretary of Defense;
(5) Secretary of Education;
(6) Secretary of Energy;
(7) Secretary of Health and Human Services;
(8) Secretary of Housing and Urban Development;
(9) Secretary of the Interior;
(10) Secretary of Labor;
(11) Secretary of State;
(12) Secretary of Transportation;
(13) Secretary of the Treasury;
(14) Secretary of Veterans Affairs;
(15) Chairman, Council of Economic Advisers;
(16) Director of the Office of Management and Budget;
(17) Director of the Office of Personnel Management;
(18) Director of the United States Arms Control and Disarmament Agency;
(19) Administrator of the Environmental Protection Agency;
(20) Director of the Federal Emergency Management Agency;
(21) Administrator of General Services;
(22) Administrator of the Small Business Administration; and,
(23) Postmaster General.

(b) *Chairman*. The Secretaries of Defense, Commerce, and Labor shall rotate, on a yearly basis, as chairman of the Committee.

(c) *Vice Chairman*. The Assistant Secretary of Defense who oversees the Department of Defense's Office of Economic Adjustment shall serve as vice chairman of the Committee. The vice chairman shall chair the Committee in the absence of both the chairman and the chairman's designee and may also preside over meetings of designated representatives of the concerned executive agencies.

(d) *Executive Director*. The head of the Department of Defense's Office of Economic Adjustment shall provide all necessary policy and administrative support for the Committee and shall be responsible for coordinating the application of the Defense Economic Adjustment Program to Department of Defense activities.

(e) *Duties*. The Committee shall:

(1) Advise, assist, and support the Defense Economic Adjustment Program;

(2) Develop procedures for ensuring that State, regional, and community officials and representatives of organized labor in those States, municipalities, localities, or labor organizations that are substantially and seriously affected by changes in Defense expenditures, realignments or closures, or cancellation or curtailment of major Defense contracts, are notified of available Federal economic adjustment programs; and,

(3) Report annually to the President and then to the Congress on the work of the Economic Adjustment Committee during the preceding fiscal year.

SEC. 5. *Responsibilities of Executive Agencies.*

(a) The head of each agency represented on the Committee shall designate an agency representative to:

(1) Serve as a liaison with the Secretary of Defense's economic adjustment staff;

(2) Coordinate agency support and participation in economic adjustment assistance projects; and,

(3) Assist in resolving Defense-related impacts on Defense-affected communities.

(b) All executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support may include the use and application of personnel, technical expertise, legal authorities, and available financial resources. This support may be used, to the extent permitted by law, to provide a coordinated Federal response to the needs of individual States, regions, municipalities, and communities adversely affected by necessary Defense changes;

(2) Afford priority consideration to requests from Defense-affected communities for Federal technical assistance, financial resources, excess or surplus property, or other requirements, that are part of a comprehensive plan used by the Committee.

SEC. 6. *Judicial Review*. This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

SEC. 7. *Construction*. (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

GEORGE BUSH.

§ 2392. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97–86, title IX, § 913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY; PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM REPORTS

Pub. L. 97–252, title XI, § 1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98–94, title XII, § 1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title XII, § 1254, Oct. 19, 1984, 98 Stat. 2611, provided that:

''(a) The Secretary of Defense should conduct a test program during fiscal years 1983, 1984, and 1985 in accordance with this subsection to test the effect of exempting certain contracts of the Department of Defense from the provisions of section 2392 of title 10, United States Code, and paying a price differential under such contracts for the purpose of relieving economic dislocations. Under such test program, the Secretary of Defense may exempt from the provisions of

such section any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract is to be awarded to an individual or firm located in a Labor Surplus Area (as defined and identified by the Department of Labor) and if the Secretary determines—

''(1) that the awarding of such contract will not adversely affect the national security of the United States;

''(2) that there is a reasonable expectation that bids will be received from a sufficient number of responsible bidders so that the award of such contract will be made at reasonable cost to the United States;

''(3) that the price differential to be paid under such contract will not exceed 2.2 percent; and

''(4) the value of such contract, when added to the cumulative value of all other contracts awarded under the test program authorized by this section, will not exceed $4,000,000,000.

''(b) Not later than April 15, 1983, April 15, 1984, and April 15, 1985 the President shall submit a report to Congress on the implementation and results to that date of the test program authorized by subsection (a). The report shall include an assessment of the costs and benefits of the test program.''

[Amendment of subsecs. (a) and (b) by Pub. L. 98–525, § 1254(a), was made effective Oct. 1, 1984; and amendment of subsec. (a) by Pub. L. 98–525, § 1254(b), was made effective as of Oct. 1, 1982.]

Similar provisions were contained in the following prior authorization act:

1982—Dec. 1, 1981, Pub. L. 97–86, title IX, § 913(b), (c), 95 Stat. 1124.

§ 2393. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice in a file available for public inspection.

(c) In this section:

(1) The term ''debar'' means to exclude, pursuant to established administrative procedures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term ''suspend'' means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))). The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(Added Pub. L. 97–86, title IX, § 914(a), Dec. 1, 1981, 95 Stat. 1124; amended Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title VIII, § 813, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title IV, § 4102(e), title VIII, § 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–355 substituted ''greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).'' for ''above the small purchase amount established in section 2304(g) of this title.'' in second sentence and inserted at end ''The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''

1991—Subsec. (d). Pub. L. 102–190 substituted ''Federal Government'' for ''Federal government''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

1987—Subsec. (c). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2410f of this title; title 33 section 569f.

§ 2394. Contracts for energy or fuel for military installations

(a) Subject to subsection (b), the Secretary of a military department may enter into contracts for periods of up to 30 years—

(1) under section 2689 of this title; and

(2) for the provision and operation of energy production facilities on real property under

the Secretary's jurisdiction or on private property and the purchase of energy produced from such facilities.

(b) A contract may be made under subsection (a) only after the approval of the proposed contract by the Secretary of Defense.

(c) The costs of contracts under this section for any year may be paid from annual appropriations for that year.

(Added Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171; amended Pub. L. 97–321, title VIII, § 805(b)(3), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1301(12), Nov. 5, 1990, 104 Stat. 1668.)

CODIFICATION

Another section 2394 was renumbered section 2395 of this title.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–510 substituted ''only after the approval of the proposed contract by the Secretary of Defense'' for ''only—

''(1) after the approval of the proposed contract by the Secretary of Defense; and

''(2) after the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have been notified of the terms of the proposed contract, including the dollar amount of the contract and the amount of energy or fuel to be delivered to the Government under the contract''.

1987—Subsec. (c). Pub. L. 100–26, which directed that ''The term'' be inserted in each paragraph after the paragraph designation and the first word after the first quotation marks in each paragraph be revised so that the initial letter of such word is lowercase, could not be executed because subsec. (c) contained no paragraphs and no quoted words. The probable intent of Congress was to amend section 2393(c) of this title.

1982—Subsec. (a). Pub. L. 97–321, § 805(b)(3)(A), substituted ''subsection (b)'' for ''subsection (c)''.

Subsecs. (c), (d). Pub. L. 97–321, § 805(b)(3)(B), redesignated subsec. (d) as (c).

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2394a. Procurement of energy systems using renewable forms of energy

(a) In procuring energy systems the Secretary of a military department shall procure systems that use solar energy or other renewable forms of energy whenever the Secretary determines that such procurement is possible and will be cost effective, reliable, and otherwise suited to supplying the energy needs of the military department under his jurisdiction.

(b) The Secretary of Defense shall from time to time study uses for solar energy and other renewable forms of energy to determine what uses of such forms of energy may be cost effective and reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2857 of this title.

(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system using such a form of energy, and (B) the original investment cost of the energy system not using such a form of energy can be recovered over the expected life of the system.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a system shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(Added Pub. L. 97–321, title VIII, § 801(a)(1), Oct. 15, 1982, 96 Stat. 1569; amended Pub. L. 98–525, title XIV, § 1405(36), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, § 1322(a)(7), div. B, title XXVIII, § 2852(a), Nov. 5, 1990, 104 Stat. 1671, 1804; Pub. L. 102–25, title VII, § 701(g)(2), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (b). Pub. L. 101–510, § 1322(a)(7), struck out ''(1)'' after ''(b)'' and struck out par. (2) which read as follows: ''The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives not less often than every two years a report on the studies conducted pursuant to paragraph (1). Each such report shall include any findings of the Secretary with respect to the use of solar energy and other renewable forms of energy in supplying the energy needs of the Department of Defense and any recommendations of the Secretary for changes in law that may be appropriate in light of such studies.''

Subsec. (c)(2), (3). Pub. L. 101–510, § 2852(a), added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a system shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system using solar energy or other renewable forms of energy, and not using such a form of energy, over the expected life of the system or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1984—Pub. L. 98–525 substituted ''using'' for ''powered by'' in section catchline.

SUBMISSION DATE FOR FIRST REPORT

Section 801(a)(3) of Pub. L. 97–321 required the first report under subsec. (b)(2) of this section to be submitted not later than two years after Oct. 15, 1982.

§ 2395. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military

equipment and supplies remain available until spent.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, § 2394; renumbered § 2395 and amended Pub. L. 97–295, § 1(28)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, § 40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10. The word ''military'' is added before ''public'' for clarity. The words ''including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles'' are omitted as included in ''technical military equipment''.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395	10:2394.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97–258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words ''and the construction of military public works'' because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cutoff date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(4)(B) of which enacted 10:2394.

CODIFICATION

Another section 2395 was renumbered section 2396 of this title.

AMENDMENTS

1982—Pub. L. 97–295 struck out ''and the construction of military public works'' after ''supplies''.

§ 2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, and pay and supplies of armed forces of friendly foreign countries

(a) An advance under an appropriation to the Department of Defense may be made to pay for—

(1) compliance with laws and ministerial regulations of a foreign country;

(2) rent in a foreign country for periods of time determined by local custom; and

(3) tuition.

(b)(1) Under regulations prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service of the Navy, an officer of an armed force of the United States accountable for public money may advance amounts to a disbursing official of a friendly foreign country or members of an armed force of a friendly foreign country for—

(A) pay and allowances to members of the armed force of that country; and

(B) necessary supplies and services.

(2) An advance may be made under this subsection only if the President has made an agreement with the foreign country—

(A) requiring reimbursement to the United States for amounts advanced;

(B) requiring the appropriate authority of the country to advance amounts reciprocally to members of the armed forces of the United States; and

(C) containing any other provision the President considers necessary to carry out this subsection and to safeguard the interests of the United States.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1053, § 2395; renumbered § 2396 and amended Pub. L. 97–295, § 1(28)(B), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395(a)	31:529i.	July 13, 1955, ch. 358, § 602, 69 Stat. 314.
2395(b)	31:529j.	Oct. 19, 1965, Pub. L. 89–265, 79 Stat. 989.

In subsection (a), the words ''On and after July 13, 1955'' are omitted as executed. The words ''An advance'' are substituted for ''section 529 of this title shall not apply in the case of payments'' because of the restatement.

In subsection (b), the words ''armed force of the United States'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4) and to avoid confusion with the phrase ''armed force of a friendly foreign country''.

In subsection (b)(1), before clause (A), the words ''the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy'' are substituted for ''the Secretary of the Treasury in their respective areas of responsibility'' because of 14:3 and 49:1655(b)(1) and (2). The words ''disbursing official'' are substituted for ''cashiers, disbursing officers'' for consistency with other titles of the United States Code and to eliminate unnecessary words.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2396	10:2395.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2395 as 10:2396 because of the redesignation of 10:2394 (enacted by Pub. L. 97–258) as 10:2395, and substitutes ''any other'' for ''another'' in subsec. (b)(2)(C).

AMENDMENTS

1982—Subsec. (b)(2)(C). Pub. L. 97–295 substituted ''any other'' for ''another''.

§ 2397. Employees or former employees of defense contractors: reports

(a) In this section:

(1) The term ''contract'' means a contract (including the net amount of modifications to, and the exercise of options under, the contract) that is in an amount in excess of the simplified acquisition threshold, as in effect at

the time that the contract is awarded. The term does not include a contract for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(2) The term ''defense contractor'' means a person that provides services, supplies, or both (including construction) to the Department of Defense under a contract directly with the Department.

(3) The term ''served'', when used with ''otherwise'', includes the representation of a defense contractor—

(A) at a hearing, trial, appeal, or other action in which the United States was a party and that involved services, supplies, or both (including construction) that were provided to, or to be provided to, the Department by the contractor; and

(B) in a transaction with the Department that involved services, supplies, or both (including construction) that were provided to, or to be provided to, the Department by the contractor.

(b)(1) This subsection applies to—

(A) a former or retired officer of the Army, Navy, Air Force, or Marine Corps who (i) has at least 10 years of active service, and (ii) held for any period during that service a grade above captain or, if the Navy, above lieutenant; and

(B) a former civilian official or employee (including a consultant or part-time employee) of the Department of Defense whose pay rate (at any time during the three-year period before the end of the last service of the person with the Department) was at least equal to the minimum rate at the time for GS–13.

(2)(A) If a person to whom this subsection applies (i) was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a year at an annual pay rate of at least $25,000 and the defense contractor was awarded contracts by the Department of Defense during the preceding year that totaled at least $10,000,000, and (ii) within the two-year period ending on the day before the person began the employment or consulting relationship, the person served on active duty or was a civilian employee for the Department, the person shall file a report with the Secretary of Defense in such manner and form as the Secretary may prescribe. The person shall file the report not later than 90 days after the date on which the person began the employment or consulting relationship.

(B) The person shall file an additional report each time, during the two-year period beginning on the date the active duty or civilian employment with the Department terminated, that the person's job with the defense contractor significantly changes or the person commences an employment or consulting relationship with another defense contractor under the conditions described in the first sentence. A person required to file an additional report under this subparagraph shall file the report within 30 days after the date of the change or the date the employment or consulting relationship commences, as the case may be.

(3) The report shall contain the following information:

(A) The name and address of the person reporting.

(B) The name and address of the defense contractor that employed the person or for whom the person served as a consultant or otherwise.

(C) The title of the position of the person when serving the defense contractor.

(D) A description of the duties and work performed or to be performed by the person for the defense contractor, and a description of any similar duties or work performed for which the person had at least partial responsibility as a civilian official or employee of the Department of Defense or a member of the armed forces during the two-year period referred to in paragraph (2)(A)(ii).

(E) The military grade of the person while on active duty or the gross pay rate while performing civilian service for the Department.

(F) A description of the duties and the work performed by the person while on active duty or performing civilian service for the Department during the two-year period referred to in paragraph (2)(A)(ii) and a description of the type of work performed and the extent to which such work was performed by the person for the defense contractor that has employed the person or has retained the person as a consultant.

(G) The date the active duty or civilian service by the person for the Department ended and the date the service with the defense contractor began and, if applicable, ended.

(H) Other pertinent information the Secretary requires.

(I) A statement describing any disqualification action taken by the person during the two-year period referred to in paragraph (2)(A)(ii) with respect to any involvement in a matter concerning the defense contractor.

(c)(1) A person who (A) holds civilian office or employment (including employment as a consultant or part-time employee) in the Department at any time during a year at a pay rate at least equal to the minimum rate for GS–13, and (B) within the two-year period before the effective date of employment with the Department was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a year at an annual pay rate of at least $25,000 and the contractor was awarded contracts by the Department during that year that total at least $10,000,000, shall file a report with the Secretary in the way and at the time prescribed by the Secretary.

(2) The report shall contain the following information:

(A) The name and address of the person reporting.

(B) The title of the position of the person with the Department.

(C) A description of the duties and work performed by the person with the Department and a description of any similar duties or work for which the person had at least partial responsibility as an employee or consultant of the defense contractor during the two-year period referred to in paragraph (1)(B).

(D) The name and address of the defense contractor that employed the person or for whom the person served as a consultant or otherwise.

(E) The title of the position of the person when serving the defense contractor.

(F) A description of the duties and work performed by the person for the defense contractor and a description of the type of work and the extent to which such work was performed by the person in connection with contracts of the defense contractor with the Department during the two-year period referred to in paragraph (1)(B).

(G) The date the service of the person with the defense contractor ended and the date the service with the Department began.

(H) Other pertinent information the Secretary requires.

(d) The Secretary shall maintain a file containing the information filed under this section. The file may be inspected by members of the public at any time during regular work hours.

(e) Before April 1 of each year, the Secretary shall report to Congress the names of persons who have filed reports for the preceding year under this section. The names shall be listed, by groups, under the names of the appropriate defense contractors. The Secretary may include for each name appropriate additional information.

(f)(1) A person who fails to comply with the filing requirements of this section shall be liable to the United States for an administrative penalty in the amount of $10,000, or in such lesser amount as may be determined by the Secretary of Defense, considering all the relevant circumstances.

(2) The Secretary shall determine whether a person has failed to file a report required by this section and shall determine the amount of the penalty under paragraph (1). The Secretary shall make the determinations on the record after opportunity for an agency hearing as provided in subchapter II of chapter 5 of title 5. The determinations of the Secretary shall be subject to judicial review under chapter 7 of such title.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1291; amended Pub. L. 99–145, title IX, § 922, Nov. 8, 1985, 99 Stat. 693; Pub. L. 100–26, § 7(j)(5), (k)(2), Apr. 21, 1987, 101 Stat. 283, 284; Pub. L. 102–25, title VII, § 701(d)(6), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title X, § 1052(29), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title IV, § 4401(d), title VIII, § 8105(d), Oct. 13, 1994, 108 Stat. 3348, 3392.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2397(a)	50:1436(a)(3)–(7), (b)(1)(B), (C), (h).	Nov. 19, 1969, Pub. L. 91–121, § 410, 83 Stat. 210; Apr. 21, 1976, Pub. L. 94–273, §§ 4(4), 5(6), 14, 90 Stat. 377, 378.
2397(b)	50:1436(a)(1), (2), (b)(1) (less (B), (C)), (c)(1) (words before semicolon), (c)(2) (words before semicolon), (c)(3) (words before semicolon), (e) (words before semicolon).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2397(c)	50:1436(b)(2), (c)(1) (less words before semicolon), (c)(2) (less words before semicolon), (c)(3) (less words before semicolon), (e) (less words before semicolon).	
2397(d)	50:1436(f).	
2397(e)	50:1436(d).	
2397(f)	50:1436(g).	

In the section, the words ''services, supplies, or both'' are substituted for ''services and materials'' because ''supplies'' is defined in 10:101(26) to include material. However, the word ''construction'' is retained and used with ''services, supplies, or both'' to allow the definition of ''services and materials'' in 50:1436(a)(4) to be omitted. The text of 50:1436(b) (words before (1)) is omitted as unnecessary because of the restatement.

In subsection (a), the definition of ''Department of Defense'' in 50:1436(a)(5) is omitted because of 10:101(5). The text of 50:1436(h) is omitted as executed. The text of 50:1436(a)(7) is omitted as unnecessary.

In subsection (a)(2), the word ''person'' is substituted for ''individual, firm, corporation, partnership, association, or other legal entity'' because of 1:1.

In subsection (a)(3), the source provisions are restated to include the conduct described therein within the definition of ''served'' when used with ''otherwise''. Although 50:1436(b)(1)(A)–(C) appear to be co-equal clauses, the use in other parts of the source provision only of the language used in clause (A), coupled with the legislative history of the source provision, indicates that clauses (B) and (C) are only descriptions of conduct that is within the scope of clause (A) as service ''otherwise'' than that described in that clause.

In subsection (b), the word ''commissioned'' is omitted as unnecessary because of 10:101(14). The words ''Army, Navy, Air Force, or Marine Corps'' are substituted for ''Armed Forces of the United States'' for clarity. In ordinary context, ''Armed Forces of the United States'' would include the Coast Guard (10:101(4)). However, the context of 50:1436 indicates that the term was not intended to include the Coast Guard; the section elsewhere refers only to the Department of Defense, not to the Department of Transportation under which the Coast Guard is located. The words ''civilian official'' are substituted for ''civilian officer'' to use the more appropriate terminology.

In subsection (c), the text of 50:1436(e) (less words before semicolon) is omitted as covered by the words ''holds . . . at any time during a fiscal year''.

In subsection (e), the word ''Congress'' is substituted for ''the President of the Senate and the Speaker of the House of Representatives'' for consistency in title 10 and with other titles of the United States Code.

In subsection (f), the words ''shall be guilty of a misdemeanor'' are omitted as unnecessary because of 18:1. The words ''upon conviction thereof'' are omitted as surplus.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–355 substituted ''simplified acquisition threshold'' for ''small purchase threshold (as defined in section 2302(7) of this title)'' and inserted at end ''The term does not include a contract for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''

1992—Subsec. (a)(1). Pub. L. 102–484 substituted ''that the contract'' for ''that contract''.

1991—Subsec. (a)(1). Pub. L. 102–25 struck out ''awarded'' after ''means a contract'' and substituted ''is in an amount in excess of the small purchase threshold (as defined in section 2302(7) of this title), as in effect at the time that contract is awarded'' for ''involves at least $25,000''.

1987—Subsec. (a). Pub. L. 100–26, §7(k)(2), inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

Subsec. (b)(1)(B). Pub. L. 100–26, §7(j)(5)(A), substituted ''three-year'' for ''3-year''.

Subsecs. (b)(2), (3), (c). Pub. L. 100–26, §7(j)(5)(B), substituted ''two-year'' for ''2-year'' wherever appearing.

Subsec. (f)(2). Pub. L. 100–26, §7(j)(5)(C), struck out '', United States Code'' after ''subchapter II of chapter 5 of title 5''.

1985—Subsec. (a)(1). Pub. L. 99–145, §922(a), struck out ''by negotiation'' after ''awarded'' and substituted ''$25,000'' for ''$10,000''.

Subsec. (b)(2). Pub. L. 99–145, §922(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A person to whom this subsection applies who (A) was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a fiscal year at an annual pay rate of at least $15,000 and the contractor was awarded contracts by the Department during that fiscal year that total at least $10,000,000, and (B) within the 3-year period before the beginning of that fiscal year served on active duty or performed civilian service for the Department, shall file a report with the Secretary of Defense (before February 16 of the next succeeding fiscal year) in the way prescribed by the Secretary.''

Subsec. (b)(3)(D). Pub. L. 99–145, §922(c)(1), added cl. (D) and struck out former cl. (D) which read: ''A brief description of the duties and work performed by the person for the defense contractor.''

Subsec. (b)(3)(F). Pub. L. 99–145, §922(c)(2), substituted ''A description'' for ''A brief description'' and ''2-year period referred to in paragraph (2)(A)(ii) and a description of the type of work performed and the extent to which such work was performed by the person for the defense contractor that has employed the person or has retained the person as a consultant'' for ''3-year period before that duty or service ended''.

Subsec. (b)(3)(I). Pub. L. 99–145, §922(c)(3), added cl. (I).

Subsec. (c)(1). Pub. L. 99–145, §922(d)(1), struck out ''fiscal'' before ''year'' in three places and substituted ''2-year'' for ''3-year'' and ''$25,000'' for ''$15,000''.

Subsec. (c)(2)(C). Pub. L. 99–145, §922(d)(2)(A), added cl. (C) and struck out former cl. (C) which read: ''A brief description of the duties with the Department.''

Subsec. (c)(2)(F). Pub. L. 99–145, §922(d)(2)(B), added cl. (F) and struck out former cl. (F) which read: ''A brief description of the duties and the work performed by the person for the defense contractor.''

Subsec. (e). Pub. L. 99–145, §922(e), substituted ''preceding year'' for ''preceding fiscal year''.

Subsec. (f). Pub. L. 99–145, §922(f), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''A person not complying with the filing requirements of this section shall be fined not more than $1,000, or imprisoned not more than 6 months, or both.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2397a of this title.

§2397a. Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors

(a) In this section:

(1) The term ''contract'' has the same meaning as provided in section 2397(a)(1) of this title.

(2) The term ''covered defense official'' means any individual who is serving—

(A) as a civilian officer or employee of the Department of Defense in a position for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS–11 under the General Schedule; or

(B) on active duty in the armed forces in a pay grade of O–4 or higher.

(3) The term ''defense contractor'' has the same meaning as provided in section 2397(a)(2) of this title.

(4) The term ''designated agency ethics official'' has the same meaning as the term ''designated agency official'' in section 109(3) of the Ethics in Government Act of 1978 (92 Stat. 1850; 5 U.S.C. App.).

(5) The term ''employment'' means a relationship under which an individual furnishes services in return for any payment or other compensation paid directly or indirectly to the individual for the services.

(6) The term ''procurement function'' includes, with respect to a contract, any function relating to—

(A) the negotiation, award, administration, or approval of the contract;

(B) the selection of a contractor;

(C) the approval of changes in the contract;

(D) quality assurance, operation and developmental testing, the approval of payment, or auditing under the contract; or

(E) the management of the procurement program.

(b)(1) If a covered defense official who has participated in the performance of a procurement function in connection with a contract awarded by the Department of Defense contacts, or is contacted by, the defense contractor to whom the contract was awarded (or an agent of such contractor) regarding future employment opportunities for the official with the defense contractor, the official (except as provided in paragraph (2)) shall—

(A) promptly report the contact to the official's supervisor and to the designated agency ethics official (or his designee) of the agency in which the covered defense official is employed; and

(B) for any period for which future employment opportunities for the covered defense official have not been rejected by either the covered defense official or the defense contractor, disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor.

(2) A covered defense official is not required to report the first contact with a defense contractor under paragraph (1)(A) or to disqualify himself under paragraph (1)(B) if the defense official terminates the contact immediately. However, if an additional contact of the same or a similar nature is made by or with the defense contractor, the covered defense official shall report (as provided in paragraph (1)) the contact and all contacts of the same or a similar nature made by or with the defense contractor during the 90-day period ending on the date the additional contact is made.

(c) A report required by subsection (b)(1) shall include—

(1) the date of each contact covered by the report; and

(2) a brief description of the substance of the contact.

(d)(1)(A) If the Secretary of Defense determines under paragraph (2) that a person has failed promptly to make a report required by subsection (b)(1)(A) or (b)(2) or has failed to disqualify himself in any case in which he is required to do so under subsection (b)(1)(B)—

(i) the person may not accept or continue employment with the defense contractor during the 10-year period beginning with the date of separation from Government service; and

(ii) the Secretary may impose on the person an administrative penalty in the amount of $10,000, or in such lesser amount as may be prescribed by the Secretary, taking into consideration all the circumstances.

(B) An individual who accepts or continues employment prohibited by subparagraph (A)(i) shall be liable to the United States for an administrative penalty as provided in subparagraph (A)(ii). Such penalty may be in addition to any penalty previously imposed on the individual under subparagraph (A)(ii) for failure promptly to make a report relating to the defense contractor by whom the individual is employed as required by subsection (b)(1)(A) or (b)(2).

(C) The Secretary of Defense may take action against an individual under this paragraph before, on, or after the date on which the individual's employment with the Government is terminated.

(2)(A) The Secretary of Defense shall determine—

(i) whether an individual has failed promptly to make a report required by subsection (b)(1)(A) or (b)(2) or has failed to disqualify himself in any case in which he is required to do so under subsection (b)(1)(B) and whether to impose a penalty under paragraph (1)(A)(ii) and the amount of such penalty; and

(ii) whether an individual is liable to the United States for an administrative penalty under paragraph (1)(B) and the amount of such penalty.

There shall be a rebuttable presumption in favor of a covered defense official that failure to report a contact with a defense contractor or failure to disqualify himself from participation in the performance of certain procurement functions is not a violation of subsection (b)(1)(A) or (b)(2) or subsection (b)(1)(B), as the case may be, if the defense official has received an opinion in writing from the designated agency ethics official under subsection (e) stating that a report or disqualification by the official was not necessary.

(B) Determinations of the Secretary under subparagraph (A) shall be made on the record after opportunity for an agency hearing as provided in subchapter II of chapter 5 of title 5. The determinations of the Secretary shall be subject to judicial review under chapter 7 of such title.

(e) If a designated agency ethics official or his designee receives a report required by subsection (b) or a request for advice from a covered defense official relating to a contact described in such subsection, the designated agency ethics official or his designee may issue a written opinion regarding the necessity of a covered defense official to file a report or disqualify himself from participation in certain procurement functions, as the case may be.

(f) A covered defense official should request the advice of his supervisor and the appropriate designated agency ethics official (or his designee) on matters to which this section applies.

(Added Pub. L. 99–145, title IX, § 923(a)(1), Nov. 8, 1985, 99 Stat. 695; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–280, § 10(b), May 4, 1990, 104 Stat. 162.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(2)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1990—Subsec. (a)(4). Pub. L. 101–280 substituted ''109(3)'' for ''209(10)''.

1987—Subsec. (a). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 10(c) of Pub. L. 101–280 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 3730 of Title 31, Money and Finance] shall take effect on January 1, 1991.''

EFFECTIVE DATE

Section 923(b) of Pub. L. 99–145 provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect with respect to contacts (referred to in section 2397a of title 10, United States Code, as added by subsection (a) of this section) made on or after the date of enactment of this Act [Nov. 8, 1985].''

SUSPENSION OF EFFECT OF SECTION

Pub. L. 101–510, div. A, title VIII, § 815(a)(2), Nov. 5, 1990, 104 Stat. 1597, provided that this section shall have no force or effect during the period beginning on Dec. 1, 1990, and ending on May 31, 1991.

Pub. L. 101–194, title V, § 507(2), Nov. 30, 1989, 103 Stat. 1759, provided that this section shall have no force or effect during the period beginning on Dec. 1, 1989, and ending one year after such date.

POST-GOVERNMENT-SERVICE EMPLOYMENT BARS ON SENIOR DEFENSE OFFICIALS

Pub. L. 99–145, title IX, § 921, Nov. 8, 1985, 99 Stat. 693, which prohibited certain Presidentially appointed Federal employees from accepting employment with defense contractors, was repealed by Pub. L. 99–500, § 101(c) [title X, § 931(b), (c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–160, and Pub. L. 99–591, § 101(c) [title X, § 931(b), (c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–160; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(b), (c), Nov. 14, 1986, 100 Stat. 3940, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, effective 180 days after Oct. 18, 1986.

§ 2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors

(a)(1) Subject to subsections (c) and (d), a person who is a former officer or employee of the Department of Defense or a former or retired member of the armed forces may not accept

compensation from a contractor during the two-year period beginning on the date of such person's separation from service in the Department of Defense if—

(A) on a majority of the person's working days during the two-year period ending on the date of such person's separation from service in the Department of Defense, the person performed a procurement function (relating to a contract of the Department of Defense) at a site or plant that is owned or operated by the contractor and that was the principal location of such person's performance of that procurement function;

(B) the person performed, on a majority of the person's working days during such two-year period, procurement functions relating to a major defense system and, in the performance of such functions, participated personally and substantially, and in a manner involving decisionmaking responsibilities, with respect to a contract for that system through contact with the contractor; or

(C) during such two-year period the person acted as one of the primary representatives of the United States—

(i) in the negotiation of a Department of Defense contract in an amount in excess of $10,000,000 with the contractor; or

(ii) in the negotiation of a settlement of an unresolved claim of the contractor in an amount in excess of $10,000,000 under a Department of Defense contract.

(2) In the application of paragraph (1) to a former officer or employee of the Department of Defense or a former or retired member of the armed forces, a person's status as a contractor shall be determined as of the date of the separation from service in the Department of Defense of the officer or employee or member or former member involved.

(b)(1) Any person who knowingly violates subsection (a)(1) shall be subject to a civil fine, in an amount not to exceed $250,000, in a civil action brought by the United States in the appropriate district court of the United States.

(2) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of subsection (a)(1), shall be subject to a civil fine, in an amount not to exceed $500,000, in a civil action brought by the United States in the appropriate district court of the United States.

(c) This section does not apply to any person with respect to—

(1) duties described in clause (A) or (B) of subsection (a)(1) which were performed while such person was serving—

(A) in a civilian position for which the rate of pay is less than the minimum rate of pay payable for grade GS–13 of the General Schedule; or

(B) as a member of the armed forces in a pay grade below pay grade O–4; or

(2) duties described in clause (C) of subsection (a)(1) which were performed while such person was serving—

(A) in a civilian position for which the rate of pay is less than the minimum rate of pay payable for a Senior Executive Service position; or

(B) as a member of the armed forces in a pay grade below pay grade O–7.

(d) This section does not prohibit any person from accepting compensation from any contractor that, during the fiscal year preceding the fiscal year in which such compensation is accepted, was not a Department of Defense contractor or was a contractor under Department of Defense contracts in a total amount less than $10,000,000.

(e)(1) Any person may, before accepting any compensation, request the appropriate designated agency ethics official to advise such person on the applicability of this section to the acceptance of such compensation. For purposes of the preceding sentence, the appropriate designated agency ethics official is the designated agency ethics official of the agency in which such person was serving at the time such person separated from service in the Department of Defense.

(2) A request for advice under paragraph (1) shall contain all information that is relevant to a determination by the designated agency ethics official on such request.

(3) Not later than 30 days after the date on which a designated agency ethics official receives a request for advice under paragraph (1), such official shall issue a written opinion on the applicability of this section to the acceptance of compensation covered by the request.

(4) If a designated agency ethics official, on the basis of a complete disclosure as required by paragraph (2), states in a written opinion furnished to any person under this subsection that this section is inapplicable to the acceptance of compensation by such person from a contractor in a particular case, there shall be a conclusive presumption in favor of such person, for the purposes of this section, that the person's acceptance of such compensation in such case is not a violation of subsection (a)(1).

(f) In this section:

(1) The term ''compensation'' includes any payment, gift, benefit, reward, favor, or gratuity—

(A) which is provided, directly or indirectly, for services rendered by the person accepting such payment, gift, benefit, reward, favor, or gratuity; and

(B) which is valued in excess of $250 at the prevailing market price.

(2)(A) The term ''contractor'' means a person—

(i) that contracts to supply the Department of Defense with goods or services;

(ii) that controls or is controlled by a person described in clause (i); or

(iii) that is under common control with a person described in clause (i).

(B) Such term does not include—

(i) an affiliate or subsidiary of a person described in subparagraph (A) that is clearly not engaged in the performance of a Department of Defense contract;

(ii) a State or local government; or

(iii) any person who contracts to supply the Department of Defense only commercial

items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))[1]

(3) The term ''procurement function'' includes, with respect to a contract, any function relating to—

(A) the negotiation, award, administration, or approval of the contract;

(B) the selection of a contractor;

(C) the approval of changes in the contract;

(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

(E) the management of the procurement program.

(4) The term ''armed forces'' does not include the Coast Guard.

(5) The term ''major defense system'' has the meaning given the term ''major system'' in section 2302(5) of this title.

(g) For the purposes of this section, a person who is a retired member or a former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the date of the person's discharge or release from active duty.

(Added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 821, Dec. 4, 1987, 101 Stat. 1132; Pub. L. 103–355, title VIII, § 8105(e), Oct. 13, 1994, 108 Stat. 3392.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

For pay payable for a Senior Executive Service position, referred to in subsec. (c)(2)(A), see section 5381 et seq. of Title 5.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1994—Subsec. (f)(2)(B)(iii). Pub. L. 103–355 added cl. (iii).

1987—Subsec. (a)(1)(C). Pub. L. 100–180 substituted ''acted as one of the primary representatives'' for ''acted as a primary representative''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 101(c) [title X, § 931(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 931(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) Subject to paragraph (2), this section and the amendments made by this section [enacting sections 2397b and 2397c of this title and repealing provisions set out as a note under section 2397a of this title] shall take effect 180 days after the date of the enactment of this Act [Oct. 18, 1986].

''(2)(A) The amendments made by this section—

''(i) do not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

''(ii) do not, except as provided in subparagraph (B), apply to a person whose service in the Department of Defense terminates before the effective date of this section.

''(B) Subparagraph (A)(ii) does not preclude the application of the amendments made by this section to a person with respect to service in the Department of Defense by such person on or after the effective date of this section.''

SUSPENSION OF EFFECT OF SECTION

Pub. L. 101–510, div. A, title VIII, § 815(a)(2), Nov. 5, 1990, 104 Stat. 1597, provided that this section shall have no force or effect during the period beginning on Dec. 1, 1990, and ending on May 31, 1991.

Pub. L. 101–194, title V, § 507(2), Nov. 30, 1989, 103 Stat. 1759, provided that this section shall have no force or effect during the period beginning on Dec. 1, 1989, and ending one year after such date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2397c of this title.

§ 2397c. Defense contractors: requirements concerning former Department of Defense officials

(a)(1) Each contract for the procurement of goods or services in excess of $100,000 entered into by the Department of Defense shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

(A) $100,000; or

(B) three times the amount of the compensation paid by the contractor to the person in violation of such contract provision.

(b)(1)(A) Any contractor that was awarded one or more contracts by the Department of Defense during the preceding fiscal year in an aggregate amount of at least $10,000,000 that is subject during a calendar year to a contract provision described in subsection (a) shall submit to the Secretary of Defense, not later than April 1 of the next year, a written report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who—

(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

(ii) during the preceding calendar year was provided compensation by that contractor, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

[1] So in original. Probably should be followed by a period.

(B) In the case of each person named in a report submitted under subparagraph (A), the report shall—

(i) identify the agency in which the person was employed or served on active duty during the last two years of the person's service with the Department of Defense;

(ii) state the person's job title and identify each major defense system, if any, on which the person performed any work with the Department of Defense during the last two years of the person's service with the Department;

(iii) contain a complete description of any work that the person is performing on behalf of the contractor; and

(iv) identify each major defense system on which the person has performed any work on behalf of the contractor.

(2) A person who knowingly fails to file a report required by paragraph (1) shall be subject to an administrative penalty, not to exceed $10,000, imposed by the Secretary of Defense after an opportunity for an agency hearing on the record pursuant to regulations prescribed by the Secretary of Defense. The determinations of the Secretary shall be included in such record. The determinations of the Secretary shall be subject to judicial review under chapter 7 of title 5.

(3) The Secretary of Defense shall review each report under paragraph (1) for the purposes of (A) assessing the accuracy and completeness of the report, and (B) identifying possible violations of section 2397b(a)(1) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

(4) The Secretary shall make reports submitted under this subsection available to any Member of Congress upon request.

(d) Subsection (g) of section 2397b of this title, and the definitions prescribed in subsection (f) of such section, apply to this section.

(e) This section does not apply to contracts for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(Added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–159, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–159; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3938, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–355, title VIII, § 8105(f), Oct. 13, 1994, 108 Stat. 3392.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–355 added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section effective 180 days after Oct. 18, 1986, with certain exceptions, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 931(c) of Pub. L. 99–661, set out as a note under section 2397b of this title.

§ 2398. Procurement of gasohol as motor vehicle fuel

(a) DOD MOTOR VEHICLES.—To the maximum extent feasible and consistent with overall defense needs and vehicle management practices prescribed by the Secretary of Defense, the Secretary shall make contracts, by competitive bid and subject to appropriations, to purchase domestically produced alcohol or alcohol-gasoline blends containing at least 10 percent domestically produced alcohol for use in motor vehicles owned or operated by the Department of Defense.

(b) OTHER FEDERAL FUEL PROCUREMENTS.—Consistent with the vehicle management practices prescribed by the heads of affected departments and agencies of the Federal Government and consistent with Executive Order Number 12261, whenever the Secretary of Defense enters into a contract for the procurement of unleaded gasoline that is subject to tax under section 4081 of the Internal Revenue Code of 1986 for motor vehicles of a department or agency of the Federal Government other than the Department of Defense, the Secretary shall buy alcohol-gasoline blends containing at least 10 percent domestically produced alcohol in any case in which the price of such fuel is the same as, or lower than, the price of unleaded gasoline.

(c) SOLICITATIONS.—Whenever the Secretary issues a solicitation for bids to procure unleaded gasoline under subsection (b), the Secretary shall expressly include in such solicitation a request for bids on alcohol-gasoline blends containing at least 10 percent domestically produced alcohol.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293; amended Pub. L. 102–190, div. A, title VIII, § 841(a), Dec. 5, 1991, 105 Stat. 1448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2398	10:2388 (note).	Nov. 9, 1979, Pub. L. 96–107, § 815, 93 Stat. 817.

The word ''prescribed'' is substituted for ''determined'' because it is more appropriate. The word ''Secretary'' is substituted for ''Department of Defense'' because the responsibility is in the head of the agency. The word ''shall'' is substituted for ''is authorized and directed'' for clarity.

REFERENCES IN TEXT

Executive Order Number 12661, referred to in subsec. (b), is set out under section 8871 of Title 42, The Public Health and Welfare.

Section 4081 of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified to section 4081 of Title 26, Internal Revenue Code.

AMENDMENTS

1991—Pub. L. 102–190 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 841(b) of Pub. L. 102–190 provided that: ''Section 2398(b) of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded pursuant to solicitations issued after the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON EXEMPTIONS AND SENSE OF CONGRESS REGARDING PURCHASE OF DOMESTIC GASOHOL

For requirement that Secretary of Defense review all exemptions granted for Department of Defense to requirements of this section, terminate any exemption determined to be no longer appropriate, and submit to Congress report on results of review not later than 90 days after Dec. 5, 1991, with justification for exemptions that remain in effect, and for sense of Congress that Department of Defense vehicles be refueled with alcohol-gasoline blend containing at least 10 percent domestically produced alcohol if available along normal travel route of vehicle at same or lower price than unleaded gasoline, see section 841(c) and (d) of Pub. L. 102–190, set out as a note under section 8871 of Title 42, The Public Health and Welfare.

§ 2399. Operational test and evaluation of defense acquisition programs

(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed.

(2) In this subsection, the term ''major defense acquisition program'' means—

(A) a conventional weapons system that is a major system within the meaning of that term in section 2302(5) of this title; and

(B) is designed for use in combat.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted until the Director of Operational Test and Evaluation of the Department of Defense approves (in writing) the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with that program.

(2) The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating the opinion of the Director as to—

(A) whether the test and evaluation performed were adequate; and

(B) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition and Technology, and the congressional defense committees. Each such report shall be submitted to those committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and Under Secretary and shall be accompanied by such comments as the Secretary may wish to make on the report.

(4) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program under paragraph (2) and the congressional defense committees have received that report.

(5) In this subsection, the term ''major defense acquisition program'' has the meaning given that term in section 139(a)(2)(B) of this title.

(c) DETERMINATION OF QUANTITY OF ARTICLES REQUIRED FOR OPERATIONAL TESTING.—The quantity of articles of a new system that are to be procured for operational testing shall be determined by—

(1) the Director of Operational Test and Evaluation of the Department of Defense, in the case of a new system that is a major defense acquisition program (as defined in section 139(a)(2)(B) of this title); or

(2) the operational test and evaluation agency of the military department concerned, in the case of a new system that is not a major defense acquisition program.

(d) IMPARTIALITY OF CONTRACTOR TESTING PERSONNEL.—In the case of a major defense acquisition program (as defined in subsection (a)(2)), no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.

(e) IMPARTIAL CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the Department of Defense).

(2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each such waiver and shall include in the Inspector General's semi-annual report an assessment of those waivers made since the last such report.

(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

(B) The limitation in subparagraph (A) does not apply to a contractor that has participated in such development, production, or testing solely in testing for the Federal Government.

(f) SOURCE OF FUNDS FOR TESTING.—The costs for all tests required under subsection (a) shall

be paid from funds available for the system being tested.

(g) DIRECTOR'S ANNUAL REPORT.—As part of the annual report of the Director under section 139 of this title, the Director shall describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director shall include in such annual report a description of each waiver granted under subsection (e)(2) since the last such report.

(h) DEFINITIONS.—In this section:

(1) The term ''operational test and evaluation'' has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

(A) computer modeling;

(B) simulation; or

(C) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(2) The term ''congressional defense committees'' means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.

(Added Pub. L. 101–189, div. A, title VIII, §802(a)(1), Nov. 29, 1989, 103 Stat. 1484; amended Pub. L. 102–484, div. A, title VIII, §819, Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, §1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859.)

PRIOR PROVISIONS

A prior section 2399, added Pub. L. 97–295, §1(29)(A), Oct. 12, 1982, 96 Stat. 1293, which related to limitation on availability of appropriations to reimburse a contractor for the cost of commercial insurance, was repealed by Pub. L. 100–370, §1(f)(2)(B), July 19, 1988, 102 Stat. 846, and was restated in section 2324(e)(1)(L) of this title by section 1(f)(2)(A) of Pub. L. 100–370.

AMENDMENTS

1994—Subsecs. (b)(5), (c)(1). Pub. L. 103–337, §1070(a)(11)(A), substituted ''139(a)(2)(B)'' for ''138(a)(2)(B)''.

Subsec. (e)(3)(B). Pub. L. 103–337, §1070(f), substituted ''solely in testing for'' for ''solely as a representative of''.

Subsec. (g). Pub. L. 103–337, §1070(a)(11)(B), substituted ''139'' for ''138''.

Subsec. (h)(1). Pub. L. 103–337, §1070(a)(11)(C), substituted ''139(a)(2)(A)'' for ''138(a)(2)(A)''.

1993—Subsec. (b)(3). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (e)(3). Pub. L. 102–484 designated existing provisions as subpar. (A) and added subpar. (B).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

ASSESSMENT OF RISK IN CONCURRENT DEVELOPMENT OF MAJOR DEFENSE ACQUISITION SYSTEMS

Section 801 of Pub. L. 101–189 provided that:

''(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish guidelines for—

''(1) determining the degree of concurrency that is appropriate for the development of major defense acquisition systems; and

''(2) assessing the degree of risk associated with various degrees of concurrency.

''(b) REPORT ON GUIDELINES.—The Secretary shall submit to Congress a report that describes the guidelines established under subsection (a) and the method used for assessing risk associated with concurrency.

''(c) REPORT ON CONCURRENCY IN MAJOR ACQUISITION PROGRAMS.—(1) The Secretary shall also submit to Congress a report outlining the risk associated with concurrency for each major defense acquisition program that is in either full-scale development or low-rate initial production as of January 1, 1990.

''(2) The report shall include consideration of the following matters with respect to each such program:

''(A) The degree of confidence in the enemy threat assessment for establishing the system's requirements.

''(B) The type of contract involved.

''(C) The degree of stability in program funding.

''(D) The level of maturity of technology involved in the system.

''(E) The availability of adequate test assets, including facilities and ranges.

''(F) The plans for transition from development to production.

''(d) SUBMISSION OF REPORTS.—The reports under subsections (b) and (c) shall be submitted to Congress not later than March 1, 1990.

''(e) DEFINITION.—For purposes of this section, the term 'concurrency' means the degree of overlap between the development and production processes of an acquisition program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2400 of this title.

§2400. Low-rate initial production of new systems

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone II decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term ''milestone II decision'' means the decision to approve the engineering and manufacturing development of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone II decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be

produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of the preceding[1] sentence, the term ''SAR'' means a Selected Acquisition Report submitted under section 2432 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 2399 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—(1) With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that (A) preserves the mobilization production base for that system, and (B) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(2) For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

(B) a test and evaluation master plan for that program; and

(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.

(Added Pub. L. 101–189, div. A, title VIII, § 803(a), Nov. 29, 1989, 103 Stat. 1487; amended Pub. L. 103–355, title III, § 3015, Oct. 13, 1994, 108 Stat. 3332.)

PRIOR PROVISIONS

A prior section 2400 was renumbered section 2534 of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–355, § 3015(1), substituted ''this section'' for ''paragraph (1)'' and ''engineering and manufacturing development'' for ''full-scale engineering development''.

Subsec. (a)(4). Pub. L. 103–355, § 3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103–355, § 3015(2), redesignated par. (4) as (5) and inserted after first sentence ''If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.''

[1] So in original. Probably should be ''first''.

§ 2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel or aircraft or for the provision of a service through use by a contractor of a vessel or aircraft only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the Committees on Armed Services and on Appropriations of the Senate and House of Representatives of the Secretary's intention to issue such a solicitation; and

(C) the Secretary has notified the Committees on Armed Services and on Appropriations of the Senate and House of Representatives of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel or aircraft to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft or naval vessel; or

(B) for the lease or charter of any aircraft or naval vessel the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense pursuant to an authorization contained in the Department of Defense Authorization Act, 1984 (Public Law 98–94), or in any other law enacted after September 24, 1983, may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(B) to pay any attorneys' fees in connection with such contract.

(d)(1)(A) In this section, the term ''long-term lease or charter'' (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel or aircraft; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term ''long-term lease or charter'' means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel or aircraft under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel or aircraft involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft or naval vessels or for the authorization of a lease or charter of aircraft or naval vessels which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft or naval vessels by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft or naval vessels authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft and naval vessels rather than directly procuring such aircraft and vessels.

(Added Pub. L. 98–94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679; amended Pub. L. 98–525, title XII, § 1232(a), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 100–26, § 7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 103–35, title II, § 201(c)(6), May 31, 1993, 107 Stat. 98.)

REFERENCES IN TEXT

The Department of Defense Authorization Act, 1984, referred to in subsec. (c)(2), is Pub. L. 98–94, Sept. 24, 1983, 97 Stat. 614, as amended. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(A), (d)(1)(B), is classified generally to Title 26, Internal Revenue Code. Section 168 of the Internal Revenue Code of 1986 is classified to section 168 of Title 26.

AMENDMENTS

1993—Subsec. (c)(2)(A). Pub. L. 103–35 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1987—Subsec. (d)(1)(B). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (c). Pub. L. 98–525, § 1232(a)(1), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), respectively, and added par. (2).

Subsec. (f). Pub. L. 98–525, § 1232(a)(2), struck out at end ''Such guidelines shall be issued not later than 90 days after the date of enactment of this section [Sept. 24, 1983].''

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section 1202(a)(3) of Pub. L. 98–94 provided that: ''Section 2401 of title 10, United States Code, as added by paragraph (1), shall not apply in the case of any lease or charter agreement entered into by the Department of Defense before December 1, 1983.''

LONG-TERM LEASE OR CHARTER AUTHORITY FOR CERTAIN DOUBLE-HULL TANKERS AND OCEANOGRAPHIC VESSELS

Pub. L. 103–160, div. A, title I, § 126, Nov. 30, 1993, 107 Stat. 1567, provided that:

''(a) AUTHORITY.—The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act [Nov. 30, 1993] using assistance provided under the National Shipbuilding Initiative.

''(b) CONDITIONS ON OBLIGATION OF FUNDS.—Unless budget authority is specifically provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a), the Secretary may not enter into a contract for a lease or charter pursuant to that subsection unless the contract includes the following provisions:

''(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that lease or charter or that kind of vessel lease or charter.

''(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that lease or charter, or that kind of lease or charter, for that fiscal year.

''(3) A statement that such a commitment given under paragraph (2) does not constitute an obligation of the United States.

''(c) INAPPLICABILITY OF CERTAIN LAWS.—A long-term lease or charter authorized by subsection (a) may be entered into without regard to the provisions of section 2401 of title 10, United States Code, or section 9081 of the Department of Defense Appropriations Act, 1990 [Pub. L. 101–165] (10 U.S.C. 2401 note).

''(d) DEFINITION.—For purposes of subsection (a), the term 'long-term lease or charter' has the meaning given that term in subparagraph (A) of section 2401(d)(1) of title 10, United States Code.''

LIMITATION ON USE OF FUNDS FOR CONTRACTS FOR LEASE OR CHARTER OF ANY VESSEL, AIRCRAFT, OR VEHICLES

Pub. L. 101–165, title IX, § 9081, Nov. 21, 1989, 103 Stat. 1147, directed that no funds available to Department of Defense could be used to enter into any contract with term of eighteen months or more or to extend or renew any contract for term of eighteen months or more, for any vessel, aircraft, or vehicle, through lease, charter, or similar agreement without previously having been submitted to Committees on Appropriations, with further requirement with respect to contractual agreements which imposed certain termination liability on Government, prior to repeal by Pub. L. 103–355, title III, § 3065(b), Oct. 13, 1994, 108 Stat. 3337. See section 2401a of this title.

ISSUANCE OF GUIDELINES

Section 1232(a)(2) of Pub. L. 98–525 provided in part that guidelines required to be issued under subsec. (f) of this section shall be issued not later than Oct. 31, 1984.

LIMITATION ON FUNDS AVAILABLE TO DEPARTMENT OF DEFENSE TO ENTER INTO CONTRACTS DURING FISCAL YEAR 1984

Section 1202(d) of Pub. L. 98–94 provided that: ''Funds available to the Department of Defense may not be used to enter into any contract during fiscal year 1984 under section 2401 of title 10, United States Code, as added by subsection (a), the term of which is for 3 years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft, or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the United States exceeding 50 percent of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided budget authority for the obligation of 10 percent of such termination liability.''

LIMITATION ON USE OF FUNDS APPROPRIATED PURSUANT TO AUTHORIZATIONS CONTAINED IN DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984

Section 1202(b) of Pub. L. 98–94, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Funds appropriated pursuant to an authorization contained in this Act may not be used to indemnify any person under the terms of a contract entered into with the United States under section 2401 of title 10, United States Code (as added by subsection (a))—

''(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986 [Title 26, Internal Revenue Code]; or

''(2) to pay any attorneys' fees in connection with such contract.''

§ 2401a. Lease of vessels, aircraft, and vehicles

The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added Pub. L. 103–355, title III, § 3065(a)(1), Oct. 13, 1994, 108 Stat. 3337.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, § 9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103–355, § 3065(b).

A prior section 2401a was renumbered section 2350f of this title.

§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

(2) In paragraph (1), the term ''commercial item'' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(Added Pub. L. 98–525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 103–355, title IV, §4102(f), title VIII, §8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392.)

AMENDMENTS

1994—Subsecs. (c), (d). Pub. L. 103–355 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 1234(c) of Pub. L. 98–525 provided that: ''Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§2403. Major weapon systems: contractor guarantees

(a) In this section:

(1) The term ''weapon system'' means items that can be used directly by the armed forces to carry out combat missions and that cost more than $100,000 or for which the eventual total procurement cost is more than $10,000,000. Such term does not include commercial items sold in substantial quantities to the general public.

(2) The term ''prime contractor'' means a party that enters into an agreement directly with the United States to furnish part or all of a weapon system.

(3) The term ''design and manufacturing requirements'' means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials, and finished product tests for the weapon system being produced.

(4) The term ''essential performance requirements'', with respect to a weapon system, means the operating capabilities or maintenance and reliability characteristics of the system that are determined by the Secretary of Defense to be necessary for the system to fulfill the military requirement for which the system is designed.

(5) The term ''component'' means any constituent element of a weapon system.

(6) The term ''mature full-scale production'' means the manufacture of all units of a weapon system after the manufacture of the first one-tenth of the eventual total production or the initial production quantity of such system, whichever is less.

(7) The term ''initial production quantity'' means the number of units of a weapon system contracted for in the first year of full-scale production.

(8) The term ''head of an agency'' has the meaning given that term in section 2302 of this title.

(b) Except as otherwise provided in this section, the head of an agency may not after January 1, 1985, enter into a contract for the production of a weapon system unless each prime contractor for the system provides the United States with written guarantees that—

(1) the item provided under the contract will conform to the design and manufacturing requirements specifically delineated in the production contract (or in any amendment to that contract);

(2) the item provided under the contract, at the time it is delivered to the United States, will be free from all defects in materials and workmanship;

(3) the item provided under the contract will conform to the essential performance requirements of the item as specifically delineated in the production contract (or in any amendment to that contract); and

(4) if the item provided under the contract fails to meet the guarantee specified in clause (1), (2), or (3), the contractor will at the election of the Secretary of Defense or as otherwise provided in the contract—

(A) promptly take such corrective action as may be necessary to correct the failure at no additional cost to the United States; or

(B) pay costs reasonably incurred by the United States in taking such corrective action.

(c) The head of the agency concerned may not require guarantees under subsection (b) from a prime contractor for a weapon system, or for a component of a weapon system, that is furnished by the United States to the contractor.

(d) Subject to subsection (e)(1), the Secretary of Defense may waive part or all of subsection (b) in the case of a weapon system, or component of a weapon system, if the Secretary determines—

(1) that the waiver is necessary in the interest of national defense; or

(2) that a guarantee under that subsection would not be cost-effective.

The Secretary may not delegate authority under this subsection to any person who holds a position below the level of Assistant Secretary of Defense or Assistant Secretary of a military department.

(e) Before making a waiver under subsection (d) with respect to a weapon system that is a major defense acquisition program for the purpose of section 2432 of this title, the Secretary of Defense shall notify the Committees on Armed Services and on Appropriations of the Senate and House of Representatives in writing of his intention to waive any or all of the requirements of subsection (b) with respect to that system and shall include in the notice an explanation of the reasons for the waiver.

(f) The requirement for a guarantee under subsection (b)(3) applies only in the case of a contract for a weapon system that is in mature full-scale production. However, nothing in this section prohibits the head of the agency concerned from negotiating a guarantee similar to the guarantee described in that subsection for a weapon system not yet in mature full-scale production. When a contract for a weapon system not yet in mature full-scale production is not to include the full guarantee described in subsection (b)(3), the Secretary shall comply with the notice requirements of subsection (e).

(g) Nothing in this section prohibits the head of the agency concerned from—

(1) negotiating the specific details of a guarantee, including reasonable exclusions, limitations and time duration, so long as the negotiated guarantee is consistent with the general requirements of this section;

(2) requiring that components of a weapon system furnished by the United States to a contractor be properly installed so as not to invalidate any warranty or guarantee provided by the manufacturer of such component to the United States;

(3) reducing the price of any contract for a weapon system or other defense equipment to take account of any payment due from a contractor pursuant to subclause (B) of subsection (b)(4);

(4) in the case of a dual source procurement, exempting from the requirements of subsection (b)(3) an amount of production by the second source contractor equivalent to the first one-tenth of the eventual total production by the second source contractor; and

(5) using written guarantees to a greater extent than required by this section, including guarantees that exceed those in clauses (1), (2), and (3) of subsection (b) and guarantees that provide more comprehensive remedies than the remedies specified under clause (4) of that subsection.

(h)(1) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this section.

(2) The regulations shall include the following:

(A) Guidelines for negotiating contractor guarantees that are reasonable and cost effective, as determined on the basis of the likelihood of defects and the estimated cost of correcting such defects.

(B) Procedures for administering contractor guarantees.

(C) Guidelines for determining the cases in which it may be appropriate to waive the requirements of this section.

(3) This section does not apply to the Coast Guard or to the National Aeronautics and Space Administration.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 99–433, title I, § 110(g)(5), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–355, title II, § 2402, Oct. 13, 1994, 108 Stat. 3324.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 98–212, title VII, § 794, Dec. 8, 1983, 97 Stat. 1454, which was set out as a note under section 2304 of this title, prior to repeal by Pub. L. 98–525, § 1234(b), eff. Jan. 1, 1985.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–355, § 2402(a), struck out par. (1) designation and par. (2) which read as follows: ''Not later than February 1 of each year, the Secretary of Defense shall submit to the committees specified in paragraph (1) a report identifying each waiver made under subsection (d) during the preceding calendar year for a weapon system that is not a major defense acquisition program for the purpose of section 2432 of this title and shall include in the report an explanation of the reasons for the waivers.''

Subsec. (h)(2), (3). Pub. L. 103–355, § 2402(b), added par. (2) and redesignated former par. (2) as (3).

1987—Subsec. (a). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1986—Subsec. (e). Pub. L. 99–433 substituted ''section 2432'' for ''section 139a'' in pars. (1) and (2).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

WRITTEN WARRANTIES IN PRIME CONTRACTS FOR MAJOR SYSTEMS ACQUISITIONS FOR COAST GUARD

Pub. L. 102–143, title I, Oct. 28, 1991, 105 Stat. 920, which directed Secretary of Transportation to issue regulations requiring written warranties to be included in all contracts with prime contractors for major systems acquisitions of the Coast Guard, with certain exceptions, was from the Department of Transportation and Related Agencies Appropriations Act, 1992, and was not repeated in subsequent appropriation acts.

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 101–516, title I, Nov. 5, 1990, 104 Stat. 2158.

Pub. L. 101–164, title I, Nov. 21, 1989, 103 Stat. 1072.

Pub. L. 100–457, title I, Sept. 30, 1988, 102 Stat. 2127.

Pub. L. 100–202, § 101(*l*) [title I], Dec. 22, 1987, 101 Stat. 1329–358, 1329–360.

Pub. L. 99–500, § 101(*l*) [H.R. 5205, title I], Oct. 18, 1986, 100 Stat. 1783–308, and Pub. L. 99–591, § 101(*l*), Oct. 30, 1986, 100 Stat. 3341–308.

Pub. L. 99–190, §101(e) [title I], Dec. 19, 1985, 99 Stat. 1267, 1269.

Pub. L. 98–473, title I, §101(i) [title I], Oct. 12, 1984, 98 Stat. 1944, 1946.

§2404. Acquisition of petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority

(a) WAIVER AUTHORITY.—The Secretary of Defense may, for any purchase of petroleum or natural gas, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

(1) that petroleum market conditions or natural gas market conditions, as the case may be, have adversely affected (or will in the near future adversely affect) the acquisition of petroleum or acquisition of natural gas, respectively, by the Department of Defense; and

(2) the waiver will expedite or facilitate the acquisition of petroleum or natural gas, as the case may be, for Government needs.

(b) SCOPE OF WAIVER.—A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of petroleum or natural gas may also be made applicable to a subcontract under that contract.

(c) EXCHANGE AUTHORITY.—The Secretary of Defense may acquire petroleum, petroleum-related services, natural gas, or natural gas-related services by exchange of petroleum, petroleum-related services, natural gas, or natural gas-related services.

(d) AUTHORITY TO SELL.—The Secretary of Defense may sell petroleum or natural gas of the Department of Defense if the Secretary determines that the sale would be in the public interest. The proceeds of such a sale shall be credited to appropriations of the Department of Defense for the acquisition of petroleum, petroleum-related services, natural gas, or natural gas-related services. Amounts so credited shall be available for obligation for the same period as the appropriations to which the amounts are credited.

(e) PETROLEUM DEFINED.—In this section, the term ''petroleum'' means natural or synthetic crude, blends of natural or synthetic crude, and products refined or derived from natural or synthetic crude or from such blends.

(Added Pub. L. 98–525, title XII, §1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, §1322(a)(8), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, §826, Nov. 30, 1993, 107 Stat. 1711.)

AMENDMENTS

1993—Pub. L. 103–160, §826(d)(2), substituted ''petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority'' for ''petroleum: authority to waive contract procedures'' as section catchline.

Subsec. (a). Pub. L. 103–160, §826(a)(1), (d)(1)(A), inserted heading, inserted ''or natural gas'' after ''petroleum'' in introductory provisions, inserted ''or natural gas market conditions, as the case may be,'' after ''petroleum market conditions'' and ''or acquisition of natural gas, respectively,'' after ''acquisition of petroleum'' in par. (1), and inserted ''or natural gas, as the case may be,'' after ''petroleum'' in par. (2).

Subsec. (b). Pub. L. 103–160, §826(a)(2), (d)(1)(B), inserted heading and inserted ''or natural gas'' after ''petroleum'' in second sentence.

Subsec. (c). Pub. L. 103–160, §826(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense may acquire petroleum by exchange of petroleum or petroleum derivatives.''

Subsec. (d). Pub. L. 103–160, §826(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–160, §826(c)(1), (d)(1)(C), redesignated subsec. (d) as (e) and inserted heading.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''The Secretary of Defense shall notify the Congress within 10 days of the date on which any waiver is made under this section and of the reasons for the necessity of exercising such waiver.''

1987—Subsec. (e). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§2405. Limitation on adjustment of shipbuilding contracts

(a) The Secretary of a military department may not adjust any price under a shipbuilding contract for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events that—

(1) in the case of a contract entered into after December 7, 1983, and before the date of the enactment of the Federal Acquisition Streamlining Act of 1994, occurred more than 18 months before the submission of the claim, request, or demand; and

(2) in the case of a contract entered into on or after the date of the enactment of the Federal Acquisition Streamlining Act of 1994, occurred more than 6 years before the submission of the claim, request, or demand.

(b) For the purposes of subsection (a), a claim, request, or demand shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.

(c)(1) If a certification referred to in subsection (b) with respect to a shipbuilding contract is determined to be deficient because of the position, status, or scope of authority of the person executing the certification, the contractor may resubmit the certification. The resubmitted certification shall be based on the knowledge of the contractor and the supporting data that existed when the original certification was submitted. The appropriateness of the person executing the resubmitted certification shall be determined on the basis of applicable law in effect at the time of the resubmission.

(2) If a certification is resubmitted pursuant to paragraph (1) by the date described in paragraph (3), the resubmitted certification shall be deemed to have been submitted for purposes of this section at the time the original certification was submitted.

(3) The date by which a certification may be resubmitted for purposes of paragraph (2) is the date which is the later of—

(A) 90 days after the promulgation of regulations under section 2410e(a)[1] of this title; or

(B) 30 days after the date which is the earlier of the date on which—

(i) the contractor is notified in writing, by an individual designated to make such notification by the Secretary of Defense, of the deficiency in the previously submitted claim, request, or demand;

(ii) a board of contract appeals issues a decision determining the previously submitted claim, request, or demand to be deficient; or

(iii) a Federal court renders a judgment determining the previously submitted claim, request, or demand to be deficient.

(4) This subsection applies only with respect to a claim, request, or demand submitted before the effective date of this paragraph.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 102–484, div. A, title VIII, § 813(c), Oct. 23, 1992, 106 Stat. 2453; Pub. L. 103–355, title II, § 2302(a), (b), Oct. 13, 1994, 108 Stat. 3321.)

REFERENCES IN TEXT

The date of the enactment of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (a), is the date of enactment of Pub. L. 103–355, which was approved Oct. 13, 1994.

Section 2410e(a) of this title, referred to in subsec. (c)(3)(A), was repealed by Pub. L. 103–355, title II, § 2301(b), Oct. 13, 1994, 108 Stat. 3321.

For the effective date of this paragraph, referred to in subsec. (c)(4), see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 98–473, title I, § 101(h) [title VIII, § 8078], Oct. 12, 1984, 98 Stat. 1904, 1938, and Pub. L. 98–212, title VII, § 787, Dec. 8, 1983, 97 Stat. 1453, which were set out as a note under section 2304 of this title. Section 101(h) [title VIII, § 8078] of Pub. L. 98–473 was repealed by Pub. L. 100–370, § 1(p)(2), July 19, 1988, 102 Stat. 851. Section 787 of Pub. L. 98–212 was repealed by Pub. L. 98–525, § 1234(b)(2), eff. Oct. 19, 1984.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355, § 2302(a), struck out ''entered into after December 7, 1983,'' after ''shipbuilding contract'' and substituted ''that—'' and pars. (1) and (2) for ''occurring more than 18 months before the submission of the claim, request, or demand.''

Subsec. (c)(4). Pub. L. 103–355, § 2302(b), added par. (4).

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 2302(c) of Pub. L. 103–355 provided that: ''Paragraphs (1) and (2) of section 2405(a) of title 10, United States Code, as added by subsection (a)(2), shall apply according to the provisions thereof on and after the date of the enactment of this Act [Oct. 13, 1994], notwithstanding section 10001(b) [set out as a note under section 251 of Title 41, Public Contracts].''

For effective date and applicability of amendment by section 2302(a)(1), (b) of Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41.

[§ 2406. Repealed. Pub. L. 103–355, title II, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3318]

Section, added Pub. L. 99–145, title IX, § 917(a), Nov. 8, 1985, 99 Stat. 689; amended Pub. L. 99–500, § 101(c) [title X, § 943(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 943(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 943(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XII, § 1231(13), Dec. 4, 1987, 101 Stat. 1160, required contractor under covered contract with an agency to make cost and pricing data available to agency in timely manner.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

[§ 2407. Renumbered § 2350b]

NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

Section 1102 of Pub. L. 99–661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which authorized Secretary of Defense to enter Weapon System Partnership Agreements with one or more governments of other member countries of NATO, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350d of this title.

NATO COOPERATIVE RESEARCH AND DEVELOPMENT

Section 1103 of Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which urged and requested member nations of NATO to cooperate in research and development of defense equipment and munitions and in the production of defense equipment, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(1), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of this title.

AUTHORITY OF SECRETARY OF DEFENSE IN CONNECTION WITH NATO AWACS PROGRAM

Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended by Pub. L. 97–252, title I, § 106, Sept. 8, 1982, 96 Stat. 720; Pub. L. 98–94, title I, § 105, Sept. 24, 1983, 97 Stat. 620; Pub. L. 98–525, title I, § 106, Oct. 19, 1984, 98 Stat. 2503; Pub. L. 99–145, title I, § 106(b), Nov. 8, 1985, 99 Stat. 596; Pub. L. 99–661, title I, § 106, Nov. 14, 1986, 100 Stat. 3827; Pub. L. 100–180, title I, § 109, Dec. 4, 1987, 101 Stat. 1036, which set forth authority of Secretary of Defense in connection with NATO AWACS Program, was repealed by Pub. L. 101–189, div. A, title IX, § 932(b), Nov. 29, 1989, 103 Stat. 1537. See section 2350e of this title.

Similar provisions were contained in the following prior authorization acts:

Pub. L. 96–342, title I, § 103, Sept. 8, 1980, 94 Stat. 1078.

Pub. L. 96–107, title I, § 104, Nov. 9, 1979, 93 Stat. 804.

§ 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

[1] See References in Text note below.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security. If the five-year period is waived, the Secretary shall submit to Congress a report stating the reasons for the waiver.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than $500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99–500, §101(c) [title X, §941(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161, and Pub. L. 99–591, §101(c) [title X, §941(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, §941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–456, div. A, title VIII, §831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101–510, div. A, title VIII, §812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–484, div. A, title VIII, §815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103–355, title IV, §4102(g), title VIII, §8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–355, §4102(g), added introductory provisions and subpar. (A).

Subsec. (a)(4)(B). Pub. L. 103–355, §8105(h)(1), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 103–355, §8105(h)(2), inserted ''or (B)'' before period at end.

Pub. L. 103–355, §4102(g), added subpar. (C).

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

1990—Subsec. (a)(1)(A). Pub. L. 101–510, §812(a)(1), inserted before period at end ''or any first tier subcontract of a defense contract''.

Subsec. (a)(1)(B). Pub. L. 101–510, §812(a)(2), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(C). Pub. L. 101–510, §812(a)(3), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(D). Pub. L. 101–510, §812(a)(4), inserted before period at end ''or first tier subcontract of a defense contract''.

Subsec. (b). Pub. L. 101–510, §812(b), inserted ''or subcontractor'' after ''contractor'' wherever appearing.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 831(b) of Pub. L. 100–456 provided that: ''Section 2408(a) of title 10, United States Code, as amended by subsection (a), shall apply with respect to individuals convicted after the date of the enactment of this Act [Sept. 29, 1988].''

EFFECTIVE DATE

Section 101(c) [title X, §941(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 941(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2408 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to employment or service on a board of directors after the date of the enactment of this Act [Oct. 18, 1986].''

DEADLINE FOR SINGLE POINT OF CONTACT

Section 815(b) of Pub. L. 102–484 provided that: ''The single point of contact required by section 2408(c) of title 10, United States Code, as added by subsection (a), shall be established not later than 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

§2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

(b) INVESTIGATION OF COMPLAINTS.—A person who believes that the person has been subjected

to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of an agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the head of the agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the agency may take one or more of the following actions:

(A) Order the contractor to take affirmative action to abate the reprisal.

(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5.

(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(e) DEFINITIONS.—In this section:

(1) The term ''agency'' means an agency named in section 2303 of this title.

(2) The term ''head of an agency'' has the meaning provided by section 2302(1) of this title.

(3) The term ''contract'' means a contract awarded by the head of an agency.

(4) The term ''contractor'' means a person awarded a contract with an agency.

(5) The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978.

(Added Pub. L. 99–500, § 101(c) [title X, § 942(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 942(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 942(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–25, title VII, § 701(k)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(30)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title VI, § 6005(a), Oct. 13, 1994, 108 Stat. 3364.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (e)(5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment, subsec. (a) related to prohibition of reprisals, subsec. (b) to investigation of complaints, subsec. (c) to construction of section, and subsec. (d) to coordination of section with former section 2409a of this title.

1992—Subsec. (d). Pub. L. 102–484 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''EFFECTIVE DATE.—This section shall not be in effect during the period when section 2409a of this title is in effect.''

1991—Subsec. (d). Pub. L. 102–25 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1052(30)(B) of Pub. L. 102–484 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if enacted immediately following the enactment of Public Law 102–25 (105 Stat. 75).''

EFFECTIVE DATE

Section 101(c) [title X, § 942(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 942(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2409 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to any reprisal action taken on or after the date of the enactment of this Act [Oct. 18, 1986].''

[§ 2409a. Repealed. Pub. L. 103–355, title VI, § 6005(b)(1), Oct. 13, 1994, 108 Stat. 3365]

Section, added Pub. L. 101–510, div. A, title VIII, § 837(a)(1), Nov. 5, 1990, 104 Stat. 1616; amended Pub. L. 102–25, title VII, § 701(j)(4), (k)(2), Apr. 6, 1991, 105 Stat. 116, 117, required promulgation of regulations prohibiting defense contractor from discharging or discriminating against employee for disclosing to Government official information concerning contract between contractor and Department of Defense evidencing violation of Federal law or regulation and providing certain complaint and investigation provisions and provided procedures for review and enforcement.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective

Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2410. Requests for equitable adjustment or other relief: certification

(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

(1) the request is made in good faith, and

(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

(1) specifically refers to this subsection; and

(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act.

(Added Pub. L. 103–355, title II, § 2301(a), Oct. 13, 1994, 108 Stat. 3320.)

REFERENCES IN TEXT

Public Law 85–804, referred to in subsecs. (a) and (b), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§ 1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

Section 4(11) of the Office of Federal Procurement Policy Act, referred to in subsec. (c), is classified to section 403(11) of Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section, added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847, provided that contract claims, requests for equitable adjustments, requests for relief under section 1431 et seq. of Title 50, War and National Defense, and other similar requests by contractors exceeding $100,000 were not to be paid unless senior official of contractor certified that claim or request was made in good faith and that data submitted was accurate and complete to the best of such official's knowledge and belief, prior to repeal by Pub. L. 102–484, div. A, title VIII, § 813(b), Oct. 23, 1992, 106 Stat. 2453, effective upon promulgation of regulations pursuant to former section 2410e of this title [Interim rules, effective Apr. 30, 1993, were promulgated and published in the Federal Register, 58 F.R. 28458, May 13, 1993, and final rules, effective May 27, 1994, were promulgated and published in the Federal Register, 59 F.R. 27662, May 27, 1994].

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2410a. Appropriated funds: availability for certain contracts for 12 months

Funds appropriated to the Department of Defense for a fiscal year shall be available for payments under contracts for any of the following purposes for 12 months beginning at any time during the fiscal year:

(1) The maintenance of tools, equipment, and facilities.

(2) The lease of real or personal property, including the maintenance of such property when contracted for as part of the lease agreement.

(3) Depot maintenance.

(4) The operation of equipment.

(Added Pub. L. 100–370, § 1(h)(2), July 19, 1988, 102 Stat. 847; amended Pub. L. 102–190, div. A, title III, § 342, Dec. 5, 1991, 105 Stat. 1343.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(e), (h), (*l*)], Dec. 19, 1985, 99 Stat. 1185, 1202.

AMENDMENTS

1991—Par. (1). Pub. L. 102–190, § 342(1), inserted '', equipment,'' after ''tools''.

Par. (4). Pub. L. 102–190, § 342(2), added par. (4).

§ 2410b. Contractor inventory accounting systems: standards

(a) The Secretary of Defense shall prescribe in regulations—

(1) standards for inventory accounting systems used by contractors under contract with the Department of Defense; and

(2) appropriate certification and enforcement requirements with respect to such standards.

(b) The regulations prescribed pursuant to subsection (a) shall not apply to a contract that is for an amount not greater than the simplified acquisition threshold.

(c) The regulations prescribed pursuant to subsection (a) shall not apply to a contract for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(Added Pub. L. 100–456, div. A, title VIII, § 834(a)(1), Sept. 29, 1988, 102 Stat. 2024; amended Pub. L. 103–355, title IV, § 4102(h), title VIII, § 8105(i), Oct. 13, 1994, 108 Stat. 3341, 3393.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–355, § 4102(h), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (c). Pub. L. 103–355, § 8105(i), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

REGULATIONS

Section 834(b) of Pub. L. 100–456 provided that:

''(1) The Secretary of Defense shall prescribe the regulations required by paragraph (1) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 30 days after the date of the enactment of this Act [Sept. 29, 1988].

''(2) The Secretary of Defense shall prescribe the regulations required by paragraph (2) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.''

§ 2410c. Preference for energy efficient electric equipment

(a) When cost effective, in establishing a new requirement for electric equipment referred to in subsection (b) and in procuring electric equipment referred to in that subsection, the Secretary of a military department or the head of a Defense Agency, as the case may be, shall provide a preference for the procurement of the most energy efficient electric equipment available that meets the requirement or the need for the procurement, as the case may be.

(b) Subsection (a) applies to the following electric equipment:

(1) Electric lamps.

(2) Electric ballasts.

(3) Electric motors.

(4) Electric refrigeration equipment.

(Added Pub. L. 102–484, div. A, title III, § 384(a)(1)(A), Oct. 23, 1992, 106 Stat. 2392.)

CODIFICATION

Another section 2410c was renumbered section 2410j of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 384(a)(2) of Pub. L. 102–484 provided that: ''The amendments made by paragraph (1) [enacting this section] shall apply to procurements for which solicitations are issued on or after the date that is 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

ELECTRIC LIGHTING AND REFRIGERATION EQUIPMENT DEMONSTRATION PROGRAMS

Section 384(b)–(d) of Pub. L. 102–484 provided that:

''(b) ELECTRIC LIGHTING DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient electric lighting equipment.

''(2) The Secretary shall designate 50 facilities owned or leased by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the electric lighting equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of electric lighting at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of electric lighting equipment at the facility that is more energy efficient than the existing electric lighting equipment to the extent that the conversion is cost effective.

''(5) Energy efficient electric lighting equipment used under the demonstration program may include compact fluorescent lamps, energy efficient electric ballasts and fixtures, and other energy efficient electric lighting equipment.

''(c) REFRIGERATION EQUIPMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient refrigeration equipment.

''(2) The Secretary shall designate 50 facilities owned or operated by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the refrigeration equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of the refrigeration equipment at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of refrigeration equipment at the facility that is more energy efficient than the existing refrigeration equipment to the extent that the conversion is cost effective.

''(d) GENERAL PROVISIONS FOR DEMONSTRATION PROGRAMS.—(1) The Secretary of Defense shall make the designations under subsections (b)(2) and (c)(2) not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary of Defense may designate a facility described in subsections (b)(2) and (c)(2) for participation in the demonstration program under subsection (b) and the demonstration program under subsection (c).

''(3) The audits required by subsections (b)(3) and (c)(3) shall be completed not later than January 1, 1994.

''(4) The head of a facility may not carry out a conversion described in subsection (b)(4) or (c)(4) if the conversion prevents the head of the facility from carrying out other improvements relating to energy efficiency that are more cost effective than that conversion.''

§ 2410d. Subcontracting plans: credit for certain purchases

(a) PURCHASES BENEFITING SEVERELY HANDICAPPED PERSONS.—In the case of a business concern that has negotiated a small business subcontracting plan with a military department or a Defense Agency, purchases made by that business concern from qualified nonprofit agencies for the blind or other severely handicapped shall count toward meeting the subcontracting goal provided in that plan.

(b) DEFINITIONS.—In this section:

(1) The term ''small business subcontracting plan'' means a plan negotiated pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) that establishes a goal for the participation of small business concerns as subcontractors under a contract.

(2) The term ''qualified nonprofit agency for the blind or other severely handicapped'' means—

(A) a qualified nonprofit agency for the blind, as defined in section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3));

(B) a qualified nonprofit agency for other severely handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4)); and

(C) a central nonprofit agency designated by the Committee for Purchase from People Who Are Blind or Severely Disabled under section 2(c) of such Act (41 U.S.C. 47(c)).

(3) The term ''Javits-Wagner-O'Day Act'' means the Act entitled ''An Act to create a Committee on Purchases of Blind-made Products, and for other purposes'', approved June 25, 1938 (41 U.S.C. 46–48c), commonly referred to as the Wagner-O'Day Act, that was revised and reenacted in the Act of June 23, 1971 (85

Stat. 77), commonly referred to as the Javits-Wagner-O'Day Act.

(c) TERMINATION.—Subsection (a) shall cease to be effective at the end of September 30, 1997.

(Added Pub. L. 102–484, div. A, title VIII, §808(b)(1), Oct. 23, 1992, 106 Stat. 2449; amended Pub. L. 103–337, div. A, title VIII, §804, Oct. 5, 1994, 108 Stat. 2815.)

REFERENCES IN TEXT

The Javits-Wagner-O'Day Act, also known as the Wagner-O'Day Act, referred to in subsec. (b)(3), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 2410d was renumbered section 2410k of this title.

AMENDMENTS

1994—Subsec. (b)(2)(C). Pub. L. 103–337, §804(1)(A), added subpar. (C).

Subsec. (b)(3), (4). Pub. L. 103–337, §804(1)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of such Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.''

Subsec. (c). Pub. L. 103–337, §804(2), substituted ''September 30, 1997'' for ''September 30, 1994''.

EFFECTIVE DATE

Section 808(c) of Pub. L. 102–484 provided that: ''Sections 2301(d) and 2410d of title 10, United States Code (as added by subsections (a) and (b), respectively), shall take effect on October 1, 1993.''

[§2410e. Repealed. Pub. L. 103–355, title II, §2301(b), Oct. 13, 1994, 108 Stat. 3321]

Section, added Pub. L. 102–484, div. A, title VIII, §813(a)(1), Oct. 23, 1992, 106 Stat. 2452, directed Secretary of Defense to propose, for inclusion in Federal Acquisition Regulation, regulations relating to certification of contract claims, requests for equitable adjustment to contract terms, and requests for relief under section 1431 et seq. of Title 50, War and National Defense, that exceeded $100,000.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§2410f. Debarment of persons convicted of fraudulent use of "Made in America" labels

(a) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting with the Department of Defense. If the Secretary determines that the person should not be debarred, the Secretary shall submit to Congress a report on such determination not later than 30 days after the determination is made.

(b) For purposes of this section, the term ''debar'' has the meaning given that term by section 2393(c) of this title.

(Added Pub. L. 102–484, div. A, title VIII, §834(a)(1), Oct. 23, 1992, 106 Stat. 2461.)

EFFECTIVE DATE OF 1992 AMENDMENT

Section 834(b) of Pub. L. 102–484 provided that: ''Section 2410f of title 10, United States Code, as added by subsection (a), shall take effect 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

PROHIBITION OF CONTRACTS

Pub. L. 103–160, div. A, title VIII, §849(b), Nov. 30, 1993, 107 Stat. 1725, provided that: ''If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a 'Made in America' inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.''

§2410g. Advance notification of contract performance outside the United States

(a) NOTIFICATION.—(1) A firm that is performing a Department of Defense contract for an amount exceeding $10,000,000, or is submitting a bid or proposal for such a contract, shall notify the Department of Defense in advance of any intention of the firm or any first-tier subcontractor of the firm to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada.

(2) If a firm submitting a bid or proposal for a Department of Defense contract is required to submit a notification under this subsection, and the firm is aware, at the time it submits its bid or proposal, that the firm intends to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada, the firm shall include the notification in its bid or proposal.

(3) The notification by a firm under paragraph (1) with respect to a first-tier subcontractor shall be made, to the maximum extent practicable, at least 30 days before award of the subcontract.

(b) RECIPIENT OF NOTIFICATION.—The firm shall transmit the notification—

(1) in the case of a contract of a military department, to such officer or employee of that military department as the Secretary of the military department may direct; and

(2) in the case of any other Department of Defense contract, to such officer or employee of the Department of Defense as the Secretary of Defense may direct.

(c) AVAILABILITY OF NOTIFICATIONS.—The Secretary of Defense shall ensure that the notifications (or copies) are maintained in compiled form for a period of 5 years after the date of submission and are available for use in the preparation of the national defense technology and industrial base assessment carried out under section 2505 of this title.

(d) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section shall not apply to contracts for any of the following:

(1) Commercial items.
(2) Military construction.
(3) Ores.
(4) Natural gas.
(5) Utilities.
(6) Petroleum products and crudes.
(7) Timber.
(8) Subsistence.

(Added Pub. L. 102–484, div. A, title VIII, § 840(a)(1), Oct. 23, 1992, 106 Stat. 2466.)

EFFECTIVE DATE OF 1992 AMENDMENT

Section 840(b) of Pub. L. 102–484 provided that: ''Section 2410g of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2410h. Acquisition fellowship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish and carry out an acquisition fellowship program in accordance with this section in order to enhance the ability of the Department of Defense to recruit employees who are highly qualified in fields of acquisition.

(b) NUMBER OF FELLOWSHIPS.—The Secretary of Defense may designate up to 25 prospective employees of the Department of Defense as acquisition fellows.

(c) ELIGIBILITY.—In order to be eligible for designation as an acquisition fellow, an employee—

(1) must complete at least 2 years of Federal Government service as an employee in an acquisition position in the Department of Defense; and

(2) must be serving in an acquisition position in the Department of Defense that involves the performance of duties likely to result in significant restrictions under law on the employment activities of that employee after leaving Government service.

(d) TWO-YEAR PERIOD OF RESEARCH AND TEACHING.—Under the fellowship program, the Secretary of Defense shall pay designated acquisition fellows to engage in research or teaching for a 2-year period in a field related to Federal Government acquisition policy. Such research or teaching may be conducted in the defense acquisition university structure of the Department of Defense, any other institution of professional education of the Federal Government, or a nonprofit institution of higher education. Each fellow shall be paid at a rate equal to the rate of pay payable for the level of the position in which the fellow served in the Department of Defense before undertaking such research or teaching.

(Added Pub. L. 102–484, div. A, title VIII, § 841(a), Oct. 23, 1992, 106 Stat. 2468.)

§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b) PROHIBITION.—(1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the small purchase threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term ''foreign entity'' means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year.

(d) EXCEPTIONS.—Subsection (b) does not apply—

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

(Added Pub. L. 102–484, div. A, title XIII, § 1332(a), Oct. 23, 1992, 106 Stat. 2555.)

§ 2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides

(a) ASSISTANCE PROGRAM.—The Secretary of Defense may enter into a cooperative agreement with a defense contractor in order—

(1) to assist an eligible scientist or engineer employed by the contractor whose employment is terminated to obtain—

(A) certification or licensure as an elementary or secondary school teacher; or

(B) the credentials necessary to serve as a teacher's aide; and

(2) to facilitate the employment of the scientist or engineer by a local educational agency that—

(A) is receiving a grant under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701[1] et seq.) as a result of having within its jurisdiction concentrations of children from low-income families; and

(B) is also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE DEFENSE CONTRACTORS.—(1) The Secretary of Defense shall establish an applica-

[1] So in original. Probably should be ''6301''.

tion and selection process for the participation of defense contractors in a cooperative agreement authorized under subsection (a).

(2) The Secretary shall determine which defense contractors are eligible to participate in the placement program on the basis of applications submitted under subsection (c). The Secretary shall limit participation to those defense contractors or subcontractors that—

(A) produce goods or services for the Department of Defense pursuant to a defense contract or operate nuclear weapons manufacturing facilities for the Department of Energy; and

(B) have recently reduced operations, or are likely to reduce operations, due to the completion or termination of a defense contract or program or by reductions in defense spending.

(3) The Secretary shall give special consideration to defense contractors who are located in areas that have been hit particularly hard by reductions in defense spending.

(c) DEFENSE CONTRACTOR APPLICATIONS.—(1) A defense contractor desiring to enter into a cooperative agreement with the Secretary of Defense under subsection (a) shall submit an application to the Secretary containing the following:

(A) Evidence that the contractor has been, or is expected to be, adversely affected by the completion or termination of a defense contract or program or by reductions in defense spending.

(B) An explanation that scientists and engineers employed by the contractor have been terminated, laid off, or retired, or are likely to be terminated, laid off, or retired, as a result of the completion or termination of a defense contract or program or reductions in defense spending.

(C) A description of programs implemented or proposed by the contractor to assist these scientists and engineers.

(D) A commitment to help fund the costs associated with the placement program by paying 50 percent of the stipend provided under subsection (g) to an employee or former employee of the contractor selected to receive assistance under this section.

(2) Once a cooperative agreement is entered into under subsection (a) between the Secretary and the defense contractor, the contractor shall publicize the program and distribute applications to prospective participants, and assist the prospective participants with the State screening process.

(d) ELIGIBLE SCIENTISTS AND ENGINEERS.—An individual shall be eligible for selection by the Secretary of Defense to receive assistance under this section if the individual—

(1) is employed or has been employed for not less than five years as a scientist or engineer with a private defense contractor that has entered into an agreement under subsection (a);

(2) has received—

(A) in the case of an individual applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(B) in the case of an individual applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(3) has been terminated or laid off (or received notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending; and

(4) satisfies such other criteria for selection as the Secretary may prescribe.

(e) SELECTION OF PARTICIPANTS.—(1) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary shall give priority to individuals who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(2) The Secretary may not select an individual under this section unless the Secretary has sufficient appropriations to carry out this section available at the time of the selection to satisfy the obligations to be incurred by the United States under this section with respect to that individual.

(f) AGREEMENT.—An individual selected under this section shall be required to enter into an agreement with the Secretary in which the participant agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an individual selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than five school years with a local educational agency identified under section 1151(b)(2) of this title, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an individual selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than five school years with a local educational agency identified under section 1151(b)(3) of this title, to begin the school year after obtaining the necessary credentials.

(g) STIPEND FOR PARTICIPANTS.—(1) The Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A stipend provided under this section shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(h) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151 of this title shall apply with respect to the placement as teachers and teachers' aides of individuals selected under this section.

(Added Pub. L. 102–484, div. D, title XLIV, § 4443(a), Oct. 23, 1992, 106 Stat. 2732, § 2410c; renumbered § 2410j and amended Pub. L. 103–35, title II, § 201(b)(1)(A), (g)(6), May 31, 1993, 107 Stat. 97, 100; Pub. L. 103–160, div. A, title XIII, § 1331(c)(3), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, § 391(b)(5), Oct. 20, 1994, 108 Stat. 4022.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Higher Education Act of 1965, referred to in subsec. (g)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20 and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out "chapter 1 of" after "grant under".

1993—Pub. L. 103–35, § 201(b)(1)(A), renumbered section 2410c of this title as this section.

Subsec. (f)(2)(A), (B). Pub. L. 103–160 substituted "five school years" for "two school years".

Subsec. (f)(2)(B). Pub. L. 103–35, § 201(g)(6), substituted "aide" for "aid" after "for placement as a teacher's".

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–160 not applicable with respect to persons selected by Secretary of Defense before Nov. 30, 1993, to participate in teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of this title or agreements entered into by Secretary before such date with local educational agencies under such sections, see section 1331(h) of Pub. L. 103–160, set out as a note under section 1151 of this title.

§ 2410k. Defense contractors: listing of suitable employment openings with local employment service office

(a) REGULATIONS.—The Secretary of Defense shall promulgate regulations containing the requirement described in subsection (b) and such other provisions as the Secretary considers necessary to administer such requirement. Such regulations shall require that each contract described in subsection (c) shall contain a clause requiring the contractor to comply with such regulations.

(b) REQUIREMENT.—The regulations promulgated under this section shall require each contractor carrying out a contract described in subsection (c) to list immediately with the appropriate local employment service office, and where appropriate the Interstate Job Bank (established by the United States Employment Service), all of its suitable employment openings under such contract.

(c) COVERED CONTRACTS.—The regulations promulgated under this section shall apply to any contract entered into with the Department of Defense in an amount of $500,000 or more.

(Added Pub. L. 102–484, div. D, title XLIV, § 4470(a)(1), Oct. 23, 1992, 106 Stat. 2753, § 2410d; renumbered § 2410k and amended Pub. L. 103–35, title II, §§ 201(b)(1)(A), 202(a)(18)(A), May 31, 1993, 107 Stat. 97, 102.)

AMENDMENTS

1993—Pub. L. 103–35, § 201(b)(1)(A), renumbered section 2410d of this title as this section.

Pub. L. 103–35, § 202(a)(18)(A), made technical amendment to directory language of Pub. L. 102–484, which enacted this section.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 202(a)(18)(A) of Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4470(b) of Pub. L. 102–484 provided that: "Section 2410d of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into beginning 120 days after the date of the enactment of this Act [Oct. 23, 1992]."

§ 2410*l*. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of $100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103–337, div. A, title III, § 363(a)(1), Oct. 5, 1994, 108 Stat. 2733.)

EFFECTIVE DATE

Section 363(c) of Pub. L. 103–337 provided that: ''Section 2410*l* of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 5, 1994].''

PROCEDURES FOR CONDUCT OF STUDIES

Section 363(b) of Pub. L. 103–337 provided that: ''The Secretary of Defense shall prescribe the following procedures:

''(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410*l* of title 10, United States Code, as added by subsection (a), which may contain a requirement that the cost comparison study include consideration of factors that are not related to cost, including the quality of the service required to be performed, the availability of Department of Defense personnel, the duration and recurring nature of the services to be performed, and the consistency of the workload.

''(2) Procedures for reviewing contracts entered into after a waiver under subsection (b) of such section to determine whether the contract is justified and sufficiently documented.''

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.
2411. Definitions.
2412. Purposes.
2413. Cooperative agreements.
2414. Limitation.
2415. Distribution.
2416. Subcontractor information.
2417. Administrative costs.
2418. Authority to provide certain types of technical assistance.
2419. Regulations.

AMENDMENTS

1993—Pub. L. 103–35, title II, §201(d)(2), May 31, 1993, 107 Stat. 99, made technical amendment to items 2418 and 2419.

1992—Pub. L. 102–484, div. D, title XLII, §4236(a)(2), Oct. 23, 1992, 106 Stat. 2691, added item 2418 and redesignated former item 2418 as 2419.

1990—Pub. L. 101–510, div. A, title VIII, §814(a)(2), Nov. 5, 1990, 104 Stat. 1597, added item 2417 and redesignated former item 2417 as 2418.

1986—Pub. L. 99–500, §101(c) [title X, §957(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, §101(c) [title X, §957(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(2), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 2416 and redesignating former item 2416 as 2417.

§2411. Definitions

In this chapter:

(1) The term ''eligible entity'' means any of the following:

(A) A State.

(B) A local government.

(C) A private, nonprofit organization.

(D) A tribal organization, as defined in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638; 25 U.S.C. 450b(*l*)), or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.

(2) The term ''distressed area'' means—

(A) the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government) that—

(i) has a per capita income of 80 percent or less of the State average; or

(ii) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or

(B) a reservation, as defined in section 3(d) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).

(3) The term ''Secretary'' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

(4) The terms ''State'' and ''local government'' have the meaning given those terms in section 6302 of title 31.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 691; Pub. L. 99–500, §101(c) [title X, §956(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §956(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §956(a), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, §807(b), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 100–456, div. A, title VIII, §841(b)(2), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, §853(e), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–25, title VII, §701(j)(5), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(31), Oct. 23, 1992, 106 Stat. 2501.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Par. (1)(D). Pub. L. 102–484 substituted ''organized for profit purposes or nonprofit purposes'' for ''organized for-profit, or nonprofit purposes''.

1991—Par. (1)(D). Pub. L. 102–25, which directed the substitution of ''for profit purposes or nonprofit'' for ''for-profit and nonprofit'', could not be executed because the words ''for-profit and nonprofit'' did not appear.

1989—Par. (1)(D). Pub. L. 101–189 substituted ''section 4(*l*)'' for ''section 4(c)'' and ''25 U.S.C. 450b(*l*)'' for ''25 U.S.C. 450(c)''.

1988—Par. (1)(D). Pub. L. 100–456 inserted '', whether or not such economic enterprise is organized for-profit, or nonprofit purposes'' before period at end.

1987—Par. (1)(D). Pub. L. 100–180, §807(b)(1), added subpar. (D).

Par. (2). Pub. L. 100–180, §807(b)(2), substituted ''means—'' for ''means'', designated existing text beginning with ''the area of a unit'' as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted ''are available; or'' for ''are available.'', and added subpar. (B).

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section generally identically, striking out in par. (1) reference to section 6302(5) and 6302(2) of title 31, in par. (2) substituting ''The term 'distressed area' means the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government)'' for '''Distressed entity' means an eligible entity (within the meaning of paragraph (1)(B))'', and adding par. (4).

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows: ''In this chapter:

''(1) 'Eligible entity' means a State (as defined in section 6302(5) of title 31), a local government (as defined in section 6302(2) of that title), or a private, nonprofit organization that enters into a cooperative agreement with the Secretary under this chapter to furnish procurement technical assistance to business entities and to defray at least one-half of the costs of furnishing such assistance.

''(2) 'Secretary' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 919(d) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 2412 to 2415 of this title] shall take effect on October 1, 1985.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2414 of this title.

§ 2412. Purposes

The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Pub. L. 99–145 amended section generally, substituting ''assistance by the Department of Defense to eligible entities'' for ''Department of Defense assistance for eligible entities'' in par. (1).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2413. Cooperative agreements

(a) The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) Under any such cooperative agreement, the eligible entity shall agree to sponsor programs to furnish procurement technical assistance to business entities and the Secretary shall agree to defray not more than one-half of the eligible entity's cost of furnishing such assistance under such programs, except that in the case of a program sponsored by such an entity that provides services solely in a distressed area, the Secretary may agree to furnish more than one-half, but not more than three-fourths, of such cost with respect to such program.

(c) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services region during each fiscal year.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 99–500, § 101(c) [title X, § 956(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 956(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, § 956(b), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, and amended Pub. L. 100–180, div. A, title XII, § 1233(b), Dec. 4, 1987, 101 Stat. 1161.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, as amended by Pub. L. 100–180, amended subsec. (b) identically, inserting ''sponsor programs to'' after first reference to ''agree to'', ''under such programs'' after ''such assistance'', and ''with respect to such program'' after ''such cost'' and substituting ''a program sponsored by such an entity that provides services solely in a distressed area'' for ''an eligible entity that is a distressed entity''.

1985—Pub. L. 99–145 amended section generally, substituting '', in accordance with the provisions of this chapter, may enter'' for ''may, in accordance with the provisions of this chapter, enter'' in subsec. (a), adding subsec. (b), and redesignating former subsec. (b) as (c).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1233(c)(2) of Pub. L. 100–180 provided that: ''The amendment made by subsection (b) [amending Public Laws 99–500, 99–591, and 99–661 which amended this section] shall apply as if included in the enactment of Public Laws 99–500, 99–591, and 99–661.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2414. Limitation

(a) IN GENERAL.—The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed—

(1) in the case of a program operating on a Statewide basis, other than a program referred to in clause (3) or (4), $300,000;

(2) in the case of a program operating on less than a Statewide basis, other than a program referred to in clause (3) or (4), $150,000;

(3) in the case of a program operated wholly within one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $150,000; or

(4) in the case of a program operated wholly within more than one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $300,000.

(b) DETERMINATIONS ON SCOPE OF OPERATIONS.—A determination of whether a procurement technical assistance program is operating

on a Statewide basis or on less than a Statewide basis or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title shall be made in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–456, div. A, title VIII, §841(a), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, §819(c), Nov. 29, 1989, 103 Stat. 1503; Pub. L. 102–25, title VII, §701(f)(7), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–25 substituted ''section 2411(1)(D)'' for ''section 2411(a)(1)(D)''.

1989—Subsec. (a). Pub. L. 101–189, §819(c)(1), added pars. (1) to (4) and struck out former pars. (1) and (2) which read as follows:

''(1) in the case of a program operating on a Statewide basis, $300,000; or

''(2) in the case of a program operating on less than a Statewide basis, $150,000.''

Subsec. (b). Pub. L. 101–189, §819(c)(2), inserted ''or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(a)(1)(D) of this title'' after ''or on less than a Statewide basis''.

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed $150,000.''

1985—Pub. L. 99–145 amended section generally, substituting ''Secretary'' for ''Department of Defense'' and ''program under'' for ''program pursuant to''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§2415. Distribution

The Secretary shall allocate funds available for assistance under this chapter equally to each Defense Contract Administration Services region. If in any such fiscal year there is an insufficient number of satisfactory proposals in a region for cooperative agreements to allow effective use of the funds allocated to that region, the funds remaining with respect to that region shall be reallocated among the remaining regions.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, §919(b), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–180, div. A, title VIII, §807(c), Dec. 4, 1987, 101 Stat. 1128.)

AMENDMENTS

1987—Pub. L. 100–180, §807(c), struck out subsecs. (a) and (b) relating to requirement by Secretary of Defense to reserve 75% of first $3,000,000 appropriated to carry out this chapter for purpose of assisting cooperative agreements entered into under section 2413 of this title for fiscal years 1986 and 1987, and for fiscal years after 1987 the authority of Secretary to allocate funds in accordance with such cooperative agreements, and substituted ''The'' for ''(c) For any amount appropriated to carry out this chapter for fiscal year 1986 or 1987 in excess of $3,000,000, the''.

1985—Subsec. (a)(2). Pub. L. 99–145, §919(b)(1)(A), substituted ''fiscal years 1986 and 1987'' for ''fiscal year 1985 is 50 percent and during fiscal year 1986''.

Subsec. (a)(3). Pub. L. 99–145, §919(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 99–145, §919(b)(2), substituted ''1987'' for ''1986''.

Subsec. (c). Pub. L. 99–145, §919(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§2416. Subcontractor information

(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

(d) In this section, the term ''defense contractor'', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $500,000.

(Added Pub. L. 99–500, §101(c) [title X, §957(a)(1)(B)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §957(a)(1)(B)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(1)(B), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2416 was renumbered section 2419 of this title.

EFFECTIVE DATE

Section 101(c) [title X, §957(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 957(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.''

§2417. Administrative costs

The Director of the Defense Logistics Agency may use, out of the amount appropriated for a fiscal year for operation and maintenance for the procurement technical assistance program authorized by this chapter, an amount not exceeding three percent of such amount to defray

the expenses of administering the provisions of this chapter during such fiscal year.

(Added Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(B), Nov. 5, 1990, 104 Stat. 1596.)

PRIOR PROVISIONS

A prior section 2417 was renumbered section 2419 of this title.

EFFECTIVE DATE

Section 814(b) of Pub. L. 101–510 provided that: ''Section 2417 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal year 1991 and each fiscal year thereafter.''

§ 2418. Authority to provide certain types of technical assistance

(a) The procurement technical assistance furnished by eligible entities assisted by the Department of Defense under this chapter may include technical assistance relating to contracts entered into with (1) Federal departments and agencies other than the Department of Defense, and (2) State and local governments.

(b) An eligible entity assisted by the Department of Defense under this chapter also may furnish information relating to assistance and other programs available pursuant to the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992.

(Added Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(B), Oct. 23, 1992, 106 Stat. 2691.)

REFERENCES IN TEXT

The Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (b), is division D of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2658. For complete classification of division D to the Code, see Short Title note set out under section 2491 of this title and Tables.

PRIOR PROVISIONS

A prior section 2418 was renumbered section 2419 of this title.

§ 2419. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, § 2416; renumbered § 2417, Pub. L. 99–500, § 101(c) [title X, § 957(a)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 957(a)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174, and Pub. L. 99–661, div. A, title IX, formerly title IV, § 957(a)(1)(A), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; renumbered § 2418, Pub. L. 101–510, div. A, title VIII, § 814(a)(1)(A), Nov. 5, 1990, 104 Stat. 1596; renumbered § 2419, Pub. L. 102–484, div. D, title XLII, § 4236(a)(1)(A), Oct. 23, 1992, 106 Stat. 2691.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2418 of this title as this section.

1990—Pub. L. 101–510 renumbered section 2417 of this title as this section.

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, renumbered section 2416 of this title as this section.

CHAPTER 143—PRODUCTION BY MILITARY AGENCIES

Sec.
2421. Plantations and farms: operation, maintenance, and improvement.
2422. Bakery and dairy products: procurement outside the United States.
2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office.
2424. Procurement of supplies and services from exchange stores outside the United States.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title III, §§ 323(b), 324(b), Nov. 29, 1989, 103 Stat. 1414, 1415, added items 2423 and 2424.

1986—Pub. L. 99–661, div. A, title III, § 312(b), Nov. 14, 1986, 100 Stat. 3852, added item 2422.

§ 2421. Plantations and farms: operation, maintenance, and improvement

(a) Appropriations for the subsistence of members of the Army, Navy, Air Force, or Marine Corps are available for expenditures necessary in the operation, maintenance, and improvement of any plantation or farm, outside the United States and under the jurisdiction of the Army, Navy, Air Force, or Marine Corps, as the case may be, for furnishing fresh fruits and vegetables to the armed forces. However, no land may be acquired under this subsection.

(b) Fruits and vegetables produced under subsection (a) that are over the amount furnished or sold to the armed forces or to civilians serving with the armed forces may be sold only outside the United States.

(c) Of the persons employed by the United States under subsection (a), only nationals of the United States are entitled to the benefits provided by laws relating to the employment, work, compensation, or other benefits of civilian employees of the United States.

(d) A plantation or farm covered by subsection (a) shall be operated, maintained, and improved by a private contractor or lessee, so far as practicable. Before using members of the Army, Navy, Air Force, or Marine Corps, as the case may be, the Secretary concerned must make a reasonable effort to make a contract or lease with a person in civil life for his services for that operation, maintenance, or improvement, on terms advantageous to the United States. A determination by the Secretary as to the reasonableness of effort to make a contract or lease, and as to the advantageous nature of its terms, is final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2421(a)	10:1213 (less 1st and 2d provisos). 34:555a (less 1st and 2d provisos).	June 28, 1944, ch. 306; restated July 1, 1947, ch. 188, 61 Stat. 234; Oct. 31, 1951, ch. 654, § 3(2), 65 Stat. 708.
2421(b).	10:1213 (2d proviso). 34:555a (2d proviso).	
2421(c)	10:1213 (1st proviso). 34:555a (1st proviso).	
2421(d)	10:1214.	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34:555b.	

In subsection (a), the word ''management'', in 10:1213 and 34:555a, is omitted as covered by the word ''operation''. The word ''members'' is substituted for the word ''personnel''. The word ''may'' is substituted for the word ''shall''. The words ''any and all'' and ''the purpose of'' are omitted as surplusage.

In subsections (a) and (b), the word ''continental'' is omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (b), the words ''of the United States'' are omitted as surplusage. The words ''Fruits and vegetables produced under subsection (a)'' are substituted for the words ''That surplus production''.

In subsection (c), the words ''nationals of the United States'' are substituted for the words ''American nationals''. The words ''civil-service laws and other * * * of the United States'' and ''rights * * * or obligations'' are omitted as surplusage.

In subsection (d), the words ''after the termination of the present war'' are omitted as executed. The word ''by'' is substituted for the words ''through the instrumentality of''. The words ''partnership, association'' are omitted as covered by the definition of ''person'' in section 1 of title 1. The words ''United States'' are substituted for the word ''Government''. The words ''management'', ''for that purpose'', and ''or agreement'' are omitted as surplusage.

§2422. Bakery and dairy products: procurement outside the United States

(a) The Secretary of Defense may authorize any element of the Department of Defense that procures bakery and dairy products for use by the armed forces outside the United States to procure any products described in subsection (b) through the use of procedures other than competitive procedures.

(b) The products referred to in subsection (a) are bakery or dairy products produced by the Army and Air Force Exchange Service in a facility outside the United States that began operating before July 1, 1986.

(Added Pub. L. 99–661, div. A, title III, §312(a), Nov. 14, 1986, 100 Stat. 3851.)

§2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with a laundry and dry cleaning facility operated by the Navy Resale and Services Support Office to procure laundry and dry cleaning services for the armed forces outside the United States.

(b) APPLICATION.—Subsection (a) shall apply only with respect to a laundry and dry cleaning facility of the Navy Resale and Services Support Office that began operating before October 1, 1989.

(Added Pub. L. 101–189, div. A, title III, §323(a), Nov. 29, 1989, 103 Stat. 1414.)

§2424. Procurement of supplies and services from exchange stores outside the United States

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with an exchange store operated under the jurisdiction of the Secretary of a military department outside the United States to procure supplies or services for use by the armed forces outside the United States.

(b) LIMITATIONS.—(1) A contract may not be entered into under subsection (a) in an amount in excess of $50,000.

(2) Supplies provided under a contract entered into under subsection (a) shall be provided from the stocks of the exchange store on hand as of the date the contract is entered into with that exchange store.

(3) A contract entered into with an exchange store under subsection (a) may not provide for the procurement of services not regularly provided by that exchange store.

(c) Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the procurement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular drink is a soft drink and whether the drink was manufactured in the United States.

(Added Pub. L. 101–189, div. A, title III, §324(a), Nov. 29, 1989, 103 Stat. 1414; amended Pub. L. 103–355, title III, §3066, Oct. 13, 1994, 108 Stat. 3337.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–355 added subsec. (c).

OPERATION OF STARS AND STRIPES BOOKSTORES OVERSEAS BY MILITARY EXCHANGES

Section 353 of Pub. L. 103–160 provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall provide for the commencement, not later than October 1, 1994, of the operation of Stars and Stripes bookstores outside of the United States by the military exchanges.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (a).''

CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2430. Major defense acquisition program defined.
2431. Weapons development and procurement schedules.
2432. Selected Acquisition Reports.
2433. Unit cost reports.
2434. Independent cost estimates; operational manpower requirements.
2435. Baseline description.
[2436 to 2439. Repealed.]
2440. Technology and industrial base plans.

AMENDMENTS

1994—Pub. L. 103–355, title III, §§3005(b), 3006(b), 3007(b), Oct. 13, 1994, 108 Stat. 3331, substituted ''Baseline description'' for ''Enhanced program stability'' in item 2435 and struck out items 2438 ''Major programs: competitive phototyping'' and 2439 ''Major programs: competitive alternative sources''.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(4), Nov. 30, 1993, 107 Stat. 1713, struck out items 2436 ''Defense

enterprise programs'' and 2437 ''Defense enterprise programs: milestone authorization''.

1992—Pub. L. 102–484, div. A, title VIII, § 821(a)(2), div. D, title XLII, § 4216(b)(2), Oct. 23, 1992, 106 Stat. 2460, 2670, added items 2438 and 2440 and redesignated former item 2438 as 2439.

1987—Pub. L. 100–26, § 7(b)(1), (2)(B), (9)(B), Apr. 21, 1987, 100 Stat. 279, 280, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' in chapter heading, added item 2430, and transferred former item 2305a from chapter 137 and redesignated it as item 2438.

1986—Pub. L. 99–661, div. A, title XII, § 1208(c)(2), Nov. 14, 1986, 100 Stat. 3976, inserted ''; operational manpower requirements'' in item 2434.

Pub. L. 99–500, § 101(c) [title X, §§ 904(a)(2), 905(a)(2), 906(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, 1783–135, 1783–137, and Pub. L. 99–591, § 101(c) [title X, §§ 904(a)(2), 905(a)(2), 906(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, 3341–135, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 904(a)(2), 905(a)(2), 906(a)(2), Nov. 14, 1986, 100 Stat. 3914–3916, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, added items 2435 to 2437.

Pub. L. 99–433, title I, § 101(a)(4), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 144, consisting of sections 2431 to 2434.

§ 2430. Major defense acquisition program defined

(a) In this chapter, the term ''major defense acquisition program'' means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in subsection (a)(2) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committees on Armed Services of the Senate and House of Representatives.

(Added Pub. L. 100–26, § 7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; amended Pub. L. 102–484, div. A, title VIII, § 817(b), Oct. 23, 1992, 106 Stat. 2455.)

AMENDMENTS

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), in par. (2) substituted ''$300,000,000'' for ''$200,000,000'', ''1990'' for ''1980'' in two places, and ''$1,800,000,000'' for ''$1,000,000,000'', and added subsec. (b).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

ENVIRONMENTAL CONSEQUENCE ANALYSIS OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 103–337, div. A, title VIII, § 815, Oct. 5, 1994, 108 Stat. 2819, provided that:

''(a) GUIDANCE.—Before April 1, 1995, the Secretary of Defense shall issue guidance, to apply uniformly throughout the Department of Defense, regarding—

''(1) how to achieve the purposes and intent of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by ensuring timely compliance for major defense acquisition programs (as defined in section 2430 of title 10, United States Code) through (A) initiation of compliance efforts before development begins, (B) appropriate environmental impact analysis in support of each milestone decision, and (C) accounting for all direct, indirect, and cumulative environmental effects before proceeding toward production; and

''(2) how to analyze, as early in the process as feasible, the life-cycle environmental costs for such major defense acquisition programs, including the materials to be used, the mode of operations and maintenance, requirements for demilitarization, and methods of disposal, after consideration of all pollution prevention opportunities and in light of all environmental mitigation measures to which the department expressly commits.

''(b) ANALYSIS.—Beginning not later than March 31, 1995, the Secretary of Defense shall analyze the environmental costs of a major defense acquisition process as an integral part of the life-cycle cost analysis of the program pursuant to the guidance issued under subsection (a).

''(c) DATA BASE FOR NEPA DOCUMENTATION.—The Secretary of Defense shall establish and maintain a data base for documents prepared by the Department of Defense in complying with the National Environmental Policy Act of 1969 with respect to major defense acquisition programs. Any such document relating to a major defense acquisition program shall be maintained in the data base for 5 years after commencement of low-rate initial production of the program.''

EFFICIENT CONTRACTING PROCESSES

Pub. L. 103–160, div. A, title VIII, § 837, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, § 5064(b)(2), Oct. 13, 1994, 108 Stat. 3360, provided that: ''The Secretary of Defense shall take any additional actions that the Secretary considers necessary to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense. Such actions shall include, in the Secretary's discretion, developing methods to streamline the procurement process, streamlining the period for entering into contracts, and defining alternative techniques to reduce reliance on military specifications and standards, in contracts for the defense acquisition programs participating in the Defense Acquisition Pilot Program.''

CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT

Pub. L. 103–160, div. A, title VIII, § 838, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, § 5064(b)(3), Oct. 13, 1994, 108 Stat. 3360, provided that: ''For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, the Secretary of Defense should define payment milestones on the basis of quantitative measures of results.''

DEFENSE ACQUISITION PILOT PROGRAM

Pub. L. 103–355, title V, § 5064, Oct. 13, 1994, 108 Stat. 3359, provided that:

''(a) IN GENERAL.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

''(1) FIRE SUPPORT COMBINED ARMS TACTICAL TRAINER (FSCATT).—The Fire Support Combined Arms Tactical

Trainer program with respect to all contracts directly related to the procurement of a training simulation system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components, with development of software as required to generate the training exercises and component interfaces.

''(2) JOINT DIRECT ATTACK MUNITION (JDAM I).—The Joint Direct Attack Munition program with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit to enhance the delivery accuracy of 1000-pound and 2000-pound bombs in inventory.

''(3) JOINT PRIMARY AIRCRAFT TRAINING SYSTEM (JPATS).—The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

''(4) COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).—

''(A) All contracts directly related to the acquisition or upgrading of commercial-derivative aircraft for use in meeting airlift and tanker requirements and the air vehicle component for airborne warning and control systems.

''(B) For purposes of this paragraph, the term 'commercial-derivative aircraft' means any of the following:

''(i) Any aircraft (including spare parts, support services, support equipment, technical manuals, and data related thereto) that is or was of a type customarily used in the course of normal business operations for other than Federal Government purposes, that has been issued a type certificate by the Administrator of the Federal Aviation Administration, and that has been sold or leased for use in the commercial marketplace or that has been offered for sale or lease for use in the commercial marketplace.

''(ii) Any aircraft that, but for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet Federal Government requirements, would satisfy or would have satisfied the criteria in subclause (I).

''(iii) For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft, other than the C–17 or any aircraft derived from the C–17, shall be considered a commercial-derivative aircraft.

''(5) COMMERCIAL-DERIVATIVE ENGINE (CDE).—The commercial derivative engine program with respect to all contracts directly related to the acquisition of (A) commercial derivative engines (including spare engines and upgrades), logistics support equipment, technical orders, management data, and spare parts, and (B) commercially derived engines for use in supporting the purchase of commercial-derivative aircraft for use in airlift and tanker requirements (including engine replacement and upgrades) and the air vehicle component for airborne warning and control systems. For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft engine shall be considered a commercial-derivative engine.

''(b) PILOT PROGRAM IMPLEMENTATION.—(1) [Amended section 833 of Pub. L. 103–160, set out below.]

''(2) [Amended section 837 of Pub. L. 103–160, set out above.]

''(3) [Amended section 838 of Pub. L. 103–160, set out above.]

''(4) Not later than 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 [Oct. 13, 1994], the Secretary of Defense shall identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

''(5) For each defense acquisition program participating in the pilot program, the Secretary of Defense shall establish a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

''(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

''(B) reduce data requirements from the current program review reporting requirements.

''(c) SPECIAL AUTHORITY.—The authority delegated under subsection (a) may include authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot programs before the effective date of such amendment or repeal [see Effective Date of 1994 Amendment note set out under section 251 of Title 41, Public Contracts]; and

''(2) to apply to a procurement of items other than commercial items under such programs—

''(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(d) APPLICABILITY.—(1) Subsection (c) applies with respect to—

''(A) a contract that is awarded or modified during the period described in paragraph (2); and

''(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

''(2) The period referred to in paragraph (1) is the period that begins 45 days after the date of the enactment of this Act [Oct. 13, 1994] and ends on September 30, 1998.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a).''

Pub. L. 103–337, div. A, title VIII, §819, Oct. 5, 1994, 108 Stat. 2822, provided that: ''The Secretary of Defense is authorized to designate the following defense acquisition programs for participation, to the extent provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Tables for classification], in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

''(1) The Fire Support Combined Arms Tactical Trainer program.

''(2) The Joint Direct Attack Munition program.

''(3) The Joint Primary Aircraft Training System.

''(4) Commercial-derivative aircraft.

''(5) Commercial-derivative engine.''

Pub. L. 103–160, div. A, title VIII, §833, Nov. 30, 1993, 107 Stat. 1716, as amended by Pub. L. 103–355, title V, §5064(b)(1), Oct. 13, 1994, 108 Stat. 3360, provided that:

''(a) MISSION-ORIENTED PROGRAM MANAGEMENT.—In the exercise of the authority provided in section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note), the Secretary of Defense should propose for one or more of the defense acquisition programs covered by the Defense Acquisition Pilot Program to utilize the concept of mission-oriented program management.

''(b) POLICIES AND PROCEDURES.—In the case of each defense acquisition program covered by the Defense Ac-

quisition Pilot Program, the Secretary of Defense should prescribe policies and procedures for the interaction of the program manager and the commander of the operational command (or a representative) responsible for the requirement for the equipment acquired, and for the interaction with the commanders of the unified and specified combatant commands. Such policies and procedures should include provisions for enabling the user commands to participate in acceptance testing.''

Pub. L. 103–160, div. A, title VIII, § 835(b), Nov. 30, 1993, 107 Stat. 1717, related to funding for Defense Acquisition Pilot Program, and authorized the Secretary of Defense to expend appropriated sums as necessary to carry out next phase of acquisition program cycle after Secretary determined that objective quantifiable performance expectations relating to execution of that phase had been identified, prior to repeal by Pub. L. 103–355, title V, § 5002(b), Oct. 13, 1994, 108 Stat. 3350.

Pub. L. 103–160, div. A, title VIII, § 839, Nov. 30, 1993, 107 Stat. 1718, provided that:

''(a) COLLECTION AND ANALYSIS OF PERFORMANCE INFORMATION.—The Secretary of Defense shall collect and analyze information on contractor performance under the Defense Acquisition Pilot Program.

''(b) INFORMATION TO BE INCLUDED.—Information collected under subsection (a) shall include the history of the performance of each contractor under the Defense Acquisition Pilot Program contracts and, for each such contract performed by the contractor, a technical evaluation of the contractor's performance prepared by the program manager responsible for the contract.''

Pub. L. 101–510, div. A, title VIII, § 809, Nov. 5, 1990, 104 Stat. 1593, as amended by Pub. L. 102–484, div. A, title VIII, § 811, Oct. 23, 1992, 106 Stat. 2450; Pub. L. 103–160, div. A, title VIII, § 832, Nov. 30, 1993, 107 Stat. 1715, provided that:

''(a) AUTHORITY TO CONDUCT PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in defense acquisition programs.

''(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) Subject to paragraph (2), the Secretary may designate defense acquisition programs for participation in the pilot program.

''(2) The Secretary may designate for participation in the pilot program only those defense acquisition programs specifically authorized to be so designated in a law authorizing appropriations for such program enacted after the date of the enactment of this Act [Nov. 5, 1990].

''(c) CONDUCT OF PILOT PROGRAM.—(1) In the case of each defense acquisition program designated for participation in the pilot program, the Secretary—

''(A) shall conduct the program in accordance with standard commercial, industrial practices; and

''(B) may waive or limit the applicability of any provision of law that is specifically authorized to be waived in the law authorizing appropriations referred to in subsection (b)(2) and that prescribes—

''(i) procedures for the procurement of supplies or services;

''(ii) a preference or requirement for acquisition from any source or class of sources;

''(iii) any requirement related to contractor performance;

''(iv) any cost allowability, cost accounting, or auditing requirements; or

''(v) any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program.

''(2) The waiver authority provided in paragraph (1)(B) does not apply to a provision of law if, as determined by the Secretary—

''(A) a purpose of the provision is to ensure the financial integrity of the conduct of a Federal Government program; or

''(B) the provision relates to the authority of the Inspector General of the Department of Defense.

''(d) PUBLICATION OF POLICIES AND GUIDELINES.—The Secretary shall publish in the Federal Register a proposed memorandum setting forth policies and guidelines for implementation of the pilot program under this section and provide an opportunity for public comment on the proposed memorandum for a period of 60 days after the date of publication. The Secretary shall publish in the Federal Register any subsequent proposed change to the memorandum and provide an opportunity for public comment on each such proposed change for a period of 60 days after the date of publication.

''(e) NOTIFICATION AND IMPLEMENTATION.—(1) The Secretary shall transmit to the congressional defense committees a written notification of each defense acquisition program proposed to be designated by the Secretary for participation in the pilot program.

''(2) If the Secretary proposes to waive or limit the applicability of any provision of law to a defense acquisition program under the pilot program in accordance with this section, the Secretary shall include in the notification regarding that acquisition program—

''(A) the provision of law proposed to be waived or limited;

''(B) the effects of such provision of law on the acquisition, including specific examples;

''(C) the actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

''(D) a discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

''(f) LIMITATION ON WAIVER AUTHORITY.—The applicability of the following requirements of law may not be waived or limited under subsection (c)(1)(B) with respect to a defense acquisition program:

''(1) The requirements of this section.

''(2) The requirements contained in any law enacted on or after the date of the enactment of this Act [Nov. 5, 1990] if that law designates such defense acquisition program as a participant in the pilot program, except to the extent that a waiver of such requirement is specifically authorized for such defense acquisition program in a law enacted on or after such date.

''(g) TERMINATION OF AUTHORITY.—The authority to waive or limit the applicability of any law under this section may not be exercised after September 30, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 139, 1621, 1733, 1737, 2433, 2506 of this title.

§ 2431. Weapons development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve

any useful purpose and gives his reasons therefor.

(b) Any report required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the report, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term ''most efficient production rate'' means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term ''minimum sustaining rate'' means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same reporting requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93–155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 614, § 139; amended Pub. L. 94–106, title VIII, § 805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, § 511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title IX, § 909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97–258, § 3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered § 2431 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title XIII, § 1301(13), title XIV, § 1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103–355, title III, § 3001, Oct. 13, 1994, 108 Stat. 3327.)

PRIOR PROVISIONS

Pub. L. 92–156, title V, § 506, Nov. 17, 1971, 85 Stat. 429, provided for weapons development and procurement schedules report and supplemental report, prior to repeal by Pub. L. 93–155, § 803(b)(2), and is covered by this section.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355, § 3001(a), substituted ''not later than 45 days after'' for ''at the same time'' and ''budget justification documents'' for ''a written report'' in first sentence and ''documents'' for ''report'' in second and third sentences.

Subsec. (b). Pub. L. 103–355, § 3001(b)(1), substituted ''include each of the following:'' for ''include—'' in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 103–355, § 3001(b)(2)–(4), capitalized first letter of first word in pars. (1) to (3) and substituted period for semicolon at end of pars. (1) and (2) and period for ''; and'' at end of par. (3).

Subsec. (b)(4). Pub. L. 103–355, § 3001(b)(5) amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the most efficient production rate and the most efficient acquisition rate consistent with the program priority established for such weapon system by the Secretary concerned.''

1990—Subsec. (b). Pub. L. 101–510, § 1484(f)(3), substituted ''covered and shall specifically include'' for ''covered, and specifically include, but not be limited to'' in introductory provisions.

Pub. L. 101–510, § 1301(13), redesignated subsec. (c) as (b), struck out ''or (b)'' after ''under subsection (a)'', and struck out former subsec. (b) which read as follows: ''The Secretary of Defense shall submit a supplemental report to Congress not less than 30, or more than 90, days before the award of any contract, or the exercise of any option in a contract, for the procurement of any such weapon system (other than procurement of units for operational testing and evaluation, or long lead-time items, or both), unless—

''(1) the contractor or contractors for that system have not yet been selected and the Secretary of Defense determines that the submission of that report would adversely affect the source selection process and notifies Congress in writing, prior to such award, of that determination, stating his reasons therefor; or

''(2) the Secretary of Defense determines that the submission of that report would otherwise adversely affect the vital security interests of the United States and notifies Congress in writing of that determination at least 30 days prior to the award, stating his reasons therefor.''

Subsecs. (c), (d). Pub. L. 101–510, § 1301(13)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139 of this title as this section.

Pub. L. 99–433, § 110(d)(12), substituted ''Weapons development and procurement schedules'' for ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 110(g)(6), substituted ''section 114(a)'' for ''section 138(a)''.

1984—Subsec. (b). Pub. L. 98–525, § 1405(3)(B), substituted ''30'' for ''thirty'' and ''90'' for ''ninety'' in introductory text.

Subsec. (b)(2). Pub. L. 98–525, § 1405(3)(A), substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

1981—Subsec. (c)(4). Pub. L. 97–86 added par. (4).

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)'' for ''section 11 of title 31''.

1975—Subsec. (b). Pub. L. 94–106 substituted ''or more than ninety, days before'' for ''or more than sixty, days before''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

COMPLIANCE OF BALLISTIC MISSILE DEFENSE SYSTEMS AND COMPONENTS WITH ABM TREATY

Pub. L. 103–337, div. A, title II, § 231, Oct. 5, 1994, 108 Stat. 2699, provided that:

''(a) GENERAL LIMITATION.—Funds appropriated to the Department of Defense for fiscal year 1995, or otherwise made available to the Department of Defense from any funds appropriated for fiscal year 1995 or for any fiscal year before 1995, may not be obligated or expended—

''(1) for any development or testing of anti-ballistic missile systems or components except for development and testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter; or

''(2) for the acquisition of any material or equipment (including long lead materials, components, piece parts, or test equipment, or any modified space launch vehicle) required or to be used for the development or testing of anti-ballistic missile systems or components, except for material or equipment required for development or testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(b) LIMITATION RELATING TO BRILLIANT EYES.—Of the funds appropriated pursuant to the authorizations of appropriations in section 201 [108 Stat. 2690] that are made available for the space-based, midcourse missile tracking system known as the Brilliant Eyes program, not more than $80,000,000 may be obligated until the Secretary of Defense submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review conducted pursuant to subsection (c).

''(c) COMPLIANCE REVIEW FOR BRILLIANT EYES.—The Secretary of Defense shall review the Brilliant Eyes program to determine whether, and under what conditions, the development, testing, and deployment of the Brilliant Eyes missile tracking system in conjunction with a theater ballistic missile defense system, with a limited national missile defense system, and with both such systems, would be in compliance with the ABM Treaty, including the interpretation of that treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(d) COMPLIANCE REVIEW FOR NAVY UPPER TIER SYSTEM.—(1) The Secretary of Defense shall review the theater ballistic missile program known as the Navy Upper Tier program to determine whether the development, testing, and deployment of the system being developed under that program would be in compliance with the ABM Treaty, including the interpretation of the Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(2) Of the funds made available to the Department of Defense for fiscal year 1995, not more than $40,000,000 may be obligated for the Navy Upper Tier program before the date on which the Secretary submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review under paragraph (1).

''(e) DEFINITIONS.—In this section:

''(1) The term 'July 13, 1993, ACDA letter' means the letter dated July 13, 1993, from the Acting Director of the Arms Control and Disarmament Agency to the chairman of the Committee on Foreign Relations of the Senate relating to the correct interpretation of the ABM Treaty and accompanied by an enclosure setting forth such interpretation.

''(2) The term 'ABM Treaty' means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed in Moscow on May 26, 1972.

''(3) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services [now Committee on National Security], the Committee on Foreign Affairs [now Committee on International Relations], and the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.''

Pub. L. 103–160, div. A, title II, § 234, Nov. 30, 1993, 107 Stat. 1595, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Section 232(a)(1) of the Missile Defense Act of 1991 [Pub. L. 102–190] (10 U.S.C. 2431 note) establishes a goal for the United States to comply with the ABM Treaty (including any protocol or amendment thereto) and not develop, test, or deploy any ballistic missile defense system, or component thereof, in violation of that treaty (as modified by any protocol or amendment thereto) while deploying an anti-ballistic missile system capable of providing a highly effective defense of the United States against limited attacks of ballistic missiles.

''(2) The Department of Defense has conducted no formal compliance review of any of the components or systems scheduled for early deployment as part of either the Theater Missile Defense Initiative or the initial limited defense system to be located at Grand Forks, North Dakota.

''(3) The Department of Defense is continuing to obligate hundreds of millions of dollars for the development and testing of systems or components of ballistic missile defense systems before a determination has been made that, if successfully developed, tested, or deployed, those systems and components would be in compliance with the ABM Treaty.

''(4) The President requested the authorization and appropriation of additional funds for continued development of such systems and components during fiscal year 1994.

''(5) The United States and its allies face existing and expanding threats from ballistic missiles capable of being used as theater weapon systems that are presently possessed by, being developed by, or being acquired by a number of countries, including Iraq, Iran, and North Korea.

''(6) Some theater ballistic missiles presently deployed or being developed (such as the Chinese-made CSS–2) have capabilities equal to or greater than the capabilities of missiles which were determined to be strategic missiles more than 20 years ago under the SALT I Interim Agreement of 1972 entered into between the United States and the Soviet Union.

''(7) The ABM Treaty was not intended to, and does not, apply to or limit research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles, regardless of the capabilities of such missiles, unless those systems, system upgrades, or system components are tested against or have demonstrated capabilities to counter modern strategic ballistic missiles.

''(8) It is a national security priority of the United States to develop and deploy highly effective theater missile defense systems capable of countering the existing and expanding threats posed by modern theater ballistic missiles as soon as is technically possible.

''(9) It is essential that the Secretary of Defense immediately undertake and complete a review for compliance with the ABM Treaty of proposed theater missile defense systems, system upgrades, and system components so as to not delay the development and

deployment of such highly effective theater missile defense systems.

''(b) REQUIRED COMPLIANCE REVIEW.—(1) The Secretary of Defense shall review the current baseline configuration of each system or system upgrade specified in paragraph (2), and the system components, to determine whether the development, testing, or deployment of that system or system upgrade would be in compliance with the ABM Treaty, including the interpretation of the Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(2) The systems and system upgrades to be reviewed pursuant to paragraph (1) are the following:

''(A) The Patriot Multimode Missile.

''(B) The Extended Range Interceptor (ERINT).

''(C) The Ground-Based Radar for theater missile defenses (GBR–T).

''(D) The Theater High Altitude Area Defense interceptor missile (THAAD).

''(E) The Brilliant Eyes space-based sensor system.

''(F) Upgrades to the AEGIS/SPY radar system of the Navy.

''(G) Upgrades to the Standard Missile–2 (SM–2) interceptor of the Navy.

''(3) If during the course of the compliance review under paragraph (1) (or any other such compliance review of a ballistic missile system or system upgrade), an issue arises that appears to indicate that a provision of the ABM Treaty may limit research, development, testing, or deployment by the United States of highly effective theater missile defense systems capable of countering modern theater ballistic missiles, the Secretary of Defense shall immediately submit to the appropriate congressional committees a report on that issue.

''(c) REPORT.—(1) For each system and system upgrade specified in paragraph (2) of subsection (b), the Secretary shall submit to the appropriate congressional committees a report on the results of the review required by that subsection. A report may include the results of the reviews of more than one system and system upgrade. For any system or system upgrade determined not to be in compliance with the ABM Treaty, the Secretary shall indicate (A) what changes to the ABM Treaty would be required for the system to be deemed compliant with such modified ABM Treaty, and (B) what changes to the performance capability of the system or system upgrade would be required in order for it to become compliant with the existing Treaty, together with the effect of those performance capability changes on the effectiveness of the planned missile defense architecture.

''(2) With regard to the Brilliant Eyes space-based sensor system, the Secretary shall include in the report findings on each of the following issues:

''(A) Whether the current baseline configuration of the Brilliant Eyes space-based sensor system would comply with the ABM Treaty if the system were used in conjunction with the planned ground-based radar system and its ground-based interceptors at Grand Forks, North Dakota.

''(B) If not, whether design changes or operational changes can be made to the Brilliant Eyes space-based sensor system that—

''(i) will result in the sensor system, when employed in conjunction with the planned ground-based radar system and its ground-based interceptors, being in compliance with the ABM Treaty; and

''(ii) will not prevent the sensor system from performing its strategic defense missions with a high degree of effectiveness.

''(C) If not, whether the Brilliant Eyes space-based sensor system can be made, through design changes or operational changes, for use only with theater missile defense systems and be in compliance with the ABM Treaty.

''(D) If so, the extent to which deployment of the Brilliant Eyes space-based sensor system would enhance the capability of upper-tier theater defense systems and lower-tier theater defense systems, respectively.

''(d) LIMITATIONS ON FUNDING PENDING SUBMISSION OF REPORT.—(1) Not more than 50 percent of the funds reported pursuant to section 231(e) [107 Stat. 1593] to be allocated for fiscal year 1994 for a system or system upgrade specified in subsection (b)(2) may be obligated for that system or system upgrade, or any of its components, until the Secretary completes the compliance review of such system or system upgrade required by subsection (b) and submits to the appropriate congressional committees the report on the results of the compliance review of that system or system upgrade as required by subsection (c).

''(2) Funds appropriated to the Department of Defense for fiscal year 1994, or otherwise made available to the Department of Defense from any funds appropriated for fiscal year 1994 or for any fiscal year before 1994, may not be obligated or expended—

''(A) for any development or testing of anti-ballistic missile systems or components except for development and testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter; or

''(B) for the acquisition of any material or equipment (including long lead materials, components, piece parts, or test equipment, or any modified space launch vehicle) required or to be used for the development or testing of anti-ballistic missile systems or components, except for material or equipment required for development or testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(e) DEFINITIONS.—In this section:

''(1) The term 'July 13, 1993, ACDA letter' means the letter dated July 13, 1993, from the Acting Director of the Arms Control and Disarmament Agency to the chairman of the Committee on Foreign Relations of the Senate relating to the correct interpretation of the ABM Treaty and accompanied by an enclosure setting forth such interpretation.

''(2) The term 'ABM Treaty' means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed in Moscow on May 26, 1972.

''(3) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services [now Committee on National Security], the Committee on Foreign Affairs [now Committee on International Relations], and the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.''

THEATER MISSILE DEFENSE MASTER PLAN

Pub. L. 103–160, div. A, title II, §235, Nov. 30, 1993, 107 Stat. 1598, provided that:

''(a) INTEGRATION AND COMPATIBILITY.—In carrying out the Theater Missile Defense Initiative, the Secretary of Defense shall—

''(1) seek to maximize the use of existing systems and technologies; and

''(2) seek to promote joint use by the military departments of existing and future ballistic missile defense equipment (rather than each military department developing its own systems that would largely overlap in their capabilities).

The Secretaries of the military departments shall seek the maximum integration and compatibility of their ballistic missile defense systems as well as of the respective roles and missions of those systems.

''(b) TMD MASTER PLAN.—The Secretary of Defense shall submit to Congress a report (which shall constitute the TMD master plan) containing a thorough and complete analysis of the future of theater missile defense programs. The report shall include the following:

''(1) A description of the mission and scope of Theater Missile Defense.

''(2) A description of the role of each of the Armed Forces in Theater Missile Defense.

''(3) A description of how those roles interact and complement each other.

''(4) An evaluation of the cost and relative effectiveness of each interceptor and sensor under development as part of a Theater Missile Defense system by the Ballistic Missile Defense Organization.

''(5) A detailed acquisition strategy which includes an analysis and comparison of the projected acquisition and life-cycle costs of each Theater Missile Defense system intended for production (shown separately for research, development, test, and evaluation, for procurement, for operation and maintenance, and for personnel costs for each system).

''(6) Specification of the baseline production rate for each year of the program through completion of procurement.

''(7) An estimate of the unit cost and capabilities of each system.

''(8) A description of plans for theater and tactical missile defense doctrine, training, tactics, and force structure.

''(c) DESCRIPTION OF TESTING PROGRAM.—The Secretary of Defense shall include in the report under subsection (b)—

''(1) a description of the current and projected testing program for Theater Missile Defense systems and major components; and

''(2) an evaluation of the adequacy of the testing program to simulate conditions similar to those the systems and components would actually be expected to encounter if and when deployed (such as the ability to track and engage multiple targets with multiple interceptors, to discriminate targets from decoys and other incoming objects, and to be employed in a shoot-look-shoot firing mode).

''(d) RELATIONSHIP TO ARMS CONTROL TREATIES.—The Secretary shall include in the report under subsection (b) a statement of how production and deployment of any projected Theater Missile Defense program will conform to all relevant arms control agreements. The report shall describe any potential noncompliance with any such agreement, when such noncompliance is expected to occur, and whether provisions need to be renegotiated within that agreement to address future contingencies.

''(e) SUBMISSION OF REPORT.—The report required by subsection (b) shall be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).

''(f) OBJECTIVES OF PLAN.—In preparing the master plan, the Secretary shall—

''(1) seek to maximize the use of existing technologies (such as SM–2, AEGIS, Patriot, and THAAD) rather than develop new systems;

''(2) seek to maximize integration and compatibility among the systems, roles, and missions of the military departments; and

''(3) seek to promote cross-service use of existing equipment (such as development of Army equipment for the Marine Corps or ground utilization of an air or sea system).

''(g) REVIEW AND REPORT ON DEPLOYMENT OF BALLISTIC MISSILE DEFENSES.—(1) The Secretary of Defense shall conduct an intensive and extensive review of opportunities to streamline the weapon systems acquisition process applicable to the development, testing, and deployment of theater ballistic missile defenses with the objective of reducing the cost of deployment and accelerating the schedule for deployment without significantly increasing programmatic risk or concurrency.

''(2) In conducting the review, the Secretary shall obtain recommendations and advice from—

''(A) the Defense Science Board;

''(B) the faculty of the Industrial College of the Armed Forces; and

''(C) federally funded research and development centers supporting the Office of the Secretary of Defense.

''(3) Not later than May 1, 1994, the Secretary shall submit to the congressional defense committees a report on the Secretary's findings resulting from the review under paragraph (1), together with any recommendations of the Secretary for legislation. The Secretary shall submit the report in unclassified form, but may submit a classified version of the report if necessary to clarify any of the information in the findings or recommendations or any related information. The report may be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).''

COOPERATION OF UNITED STATES ALLIES ON DEVELOPMENT OF TACTICAL AND THEATER MISSILE DEFENSES

Pub. L. 103–160, div. A, title II, §242(a)–(e), Nov. 30, 1993, 107 Stat. 1603–1605, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Systems to provide effective defense against theater and tactical ballistic missiles that may be developed and deployed by the United States have the potential to make contributions to the national security interests of nations that are allies of the United States that would be equal to or greater than the contributions such systems would make to the national security interests of the United States.

''(2) The cost of developing and deploying a broad spectrum of such systems will be several tens of billions of dollars.

''(3) A truly cooperative multinational approach to the development and deployment of such systems could substantially reduce the financial burden of such an undertaking on any one country and would involve additional sources of technological expertise.

''(4) While leaders of nations that are allies of the United States have stated an interest in becoming involved, or increasing involvement, in United States tactical missile defense programs, the governments of those nations are unlikely to support programs for theater missile defense development and deployment unless, at a minimum, they can participate in meaningful ways in the planning and execution of such programs, including active participation in research and development and production of the systems involved.

''(5) Given the high cost of developing theater ballistic missile defense systems, the participation of United States allies in the efforts to develop tactical missile defenses would result in substantial savings to the United States.

''(b) PLAN AND REPORTS.—(1) The Secretary of Defense shall develop a plan to coordinate development and implementation of Theater Missile Defense programs of the United States with theater missile defense programs of United States allies, with the goal of avoiding duplication of effort, increasing interoperability, and reducing costs. The plan shall set forth in detail any financial, in-kind, or other form of participation by each nation in cooperative efforts to plan, develop, produce, and deploy theater ballistic missile defenses for the mutual benefit of the countries involved.

''(2) The Secretary shall submit to Congress a report on the plan developed under paragraph (1). The report shall be submitted in both classified and unclassified versions, as appropriate, and may be submitted as a component of the next Theater Missile Defense Initiative report to Congress.

''(3) The Secretary shall include in each annual Theater Missile Defense Initiative report to Congress a report on actions taken to implement the plan developed under paragraph (1). Each such report shall set forth the status of discussions between the United States and United States allies for the purposes stated in that paragraph and shall state the status of contributions by those allies to the Theater Missile Defense Cooperation Account, shown separately for each allied country covered by the plan.

''(c) RESTRICTION ON FUNDS.—Of the total amount appropriated pursuant to authorizations in this Act [see

Tables for classification] for theater ballistic missile defense programs, not more than 80 percent may be obligated until—

''(1) the report under subsection (b)(2) is submitted to Congress; and

''(2) the President certifies in writing to Congress that representatives of the United States have formally submitted to each of the member nations of the North Atlantic Treaty Organization and to Japan, Israel, and South Korea a proposal concerning the matters described in the report.

The President may submit with such certification a report of similar formal contacts with any other country that the President considers appropriate.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that whenever the United States deploys theater ballistic missile defenses to protect another country, or the military forces of another country, that has not provided financial or in-kind support for development of theater ballistic missile defenses, the United States should consider whether it is appropriate to seek reimbursement from that country to cover at least the incremental cost to the United States of such deployment.

''(e) ALLIED PARTICIPATION IN TMD PROGRAMS.—Congress encourages allies of the United States, and particularly those allies that would benefit most from deployment of Theater Missile Defense systems, to participate in, or to increase participation in, cooperative Theater Missile Defense programs of the United States. Congress also encourages participation by the United States in cooperative theater missile defense efforts of allied nations as such programs emerge.''

[Determination of President of the United States, No. 94–24, May 16, 1994, 59 F.R. 28759, certified, pursuant to the authority vested in the President by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160 [see section 242(c)(2) of Pub. L. 103–160, set out above], that the Director, Ballistic Missile Defense Organization, had formally submitted to representatives of the member nations of the North Atlantic Treaty Organization and Japan, Israel, and South Korea a proposal concerning coordination of the development and implementation of U.S. Theater Missile Defense (TMD) programs with TMD programs of our friends and allies.]

TRANSFER OF FOLLOW-ON TECHNOLOGY PROGRAMS

Pub. L. 103–160, div. A, title II, §243, Nov. 30, 1993, 107 Stat. 1605, provided that:

''(a) MANAGEMENT RESPONSIBILITY.—Except as provided in subsection (b), the Secretary of Defense shall provide that management and budget responsibility for research and development of any program, project, or activity to develop far-term follow-on technology relating to ballistic missile defense shall be provided through the Advanced Research Projects Agency or the appropriate military department.

''(b) WAIVER AUTHORITY.—The Secretary may waive the provisions of subsection (a) in the case of a particular program, project, or activity if the Secretary certifies to the congressional defense committees that it is in the national security interest of the United States to provide management and budget responsibility for that program, project, or activity through the Ballistic Missile Defense Organization.

''(c) REPORT REQUIRED.—As a part of the report required by section 231(e) [107 Stat. 1593], the Secretary shall submit to the congressional defense committees a report identifying—

''(1) each program, project, and activity with respect to which the Secretary has transferred management and budget responsibility from the Ballistic Missile Defense Organization in accordance with subsection (a);

''(2) the agency or military department to which each such transfer was made; and

''(3) the date on which each such transfer was made.

''(d) DEFINITION.—For the purposes of this section, the term 'far-term follow-on technology' means a technology that is not incorporated into a ballistic missile defense architecture and is not likely to be incorporated within 15 years into a weapon system for ballistic missile defense.

''(e) CONFORMING AMENDMENT.—Section 234 of the Missile Defense Act of 1991 [Pub. L. 102–190; 10 U.S.C. 2431 note] is repealed.''

THEATER MISSILE DEFENSE INITIATIVE

Pub. L. 102–484, div. A, title II, §231, Oct. 23, 1992, 106 Stat. 2354, provided that:

''(a) ESTABLISHMENT OF THEATER MISSILE DEFENSE INITIATIVE.—The Secretary of Defense shall establish a Theater Missile Defense Initiative office within the Department of Defense. All theater and tactical missile defense activities of the Department of Defense (including all programs, projects, and activities formerly associated with the Theater Missile Defense program element of the Strategic Defense Initiative) shall be carried out under the Theater Missile Defense Initiative.

''(b) FUNDING FOR FISCAL YEAR 1993.—Of the amounts appropriated pursuant to section 201 [106 Stat. 2349] or otherwise made available to the Department of Defense for research, development, test, and evaluation for fiscal year 1993, not more than $935,000,000 may be obligated for activities of the Theater Missile Defense Initiative, of which not less than $90,000,000 shall be made available for exploration of promising concepts for naval theater missile defense.

''(c) REPORT.—When the President's budget for fiscal year 1994 is submitted to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report—

''(1) setting forth the proposed allocation by the Secretary of funds for the Theater Missile Defense Initiative for fiscal year 1994, shown for each program, project, and activity;

''(2) describing an updated master plan for the Theater Missile Defense Initiative that includes (A) a detailed consideration of plans for theater and tactical missile defense doctrine, training, tactics, and force structure, and (B) a detailed acquisition strategy which includes a consideration of acquisition and life-cycle costs through the year 2005 for the programs, projects, and activities associated with the Theater Missile Defense Initiative;

''(3) assessing the possible near-term contribution and cost-effectiveness for theater missile defense of exoatmospheric capabilities, to include at a minimum a consideration of—

''(A) the use of the Navy's Standard missile combined with a kick stage rocket motor and lightweight exoatmospheric projectile (LEAP); and

''(B) the use of the Patriot missile combined with a kick stage rocket motor and LEAP.

''(d) EFFECTIVE DATE.—The provisions of subsections (a), (b), and (c) shall be implemented not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

MISSILE DEFENSE PROGRAM

Pub. L. 102–190, div. A, title II, part C, Dec. 5, 1991, 105 Stat. 1321, as amended by Pub. L. 102–484, div. A, title II, §234(a)–(d)(1), (e), (f), title X, §1053(1), (2), Oct. 23, 1992, 106 Stat. 2356, 2357, 2501; Pub. L. 103–35, title II, §§202(a)(2), 203(b)(1), May 31, 1993, 107 Stat. 101, 102; Pub. L. 103–160, div. A, title II, §§232, 243(e), Nov. 30, 1993, 107 Stat. 1593, 1606; Pub. L. 103–337, div. A, title II, §233, Oct. 5, 1994, 108 Stat. 2700, provided that:

''SEC. 231. SHORT TITLE.

''This part may be cited as the 'Missile Defense Act of 1991'.

''SEC. 232. MISSILE DEFENSE GOAL OF THE UNITED STATES.

''(a) MISSILE DEFENSE GOALS OF THE UNITED STATES.—It is a goal of the United States to—

''(1) comply with the ABM Treaty, including any protocol or amendment thereto, and not develop,

test, or deploy any ballistic missile defense system, or component thereof, in violation of the treaty, as modified by any protocol or amendment thereto, while developing, and maintaining the option to deploy, an anti-ballistic missile system that is capable of providing a highly effective defense of the United States against limited attacks of ballistic missiles;

''(2) maintain strategic stability; and

''(3) provide highly effective theater missile defenses (TMDs) to forward-deployed and expeditionary elements of the Armed Forces of the United States and, as appropriate, to friends and allies of the United States.

''(b) ENDORSEMENT OF ADDITIONAL MEASURES.—As an additional component of the overall goal of protecting the United States against the threat posed by ballistic missiles, Congress endorses such additional measures as—

''(1) joint discussions between the United States and other nuclear weapons states on strengthening nuclear command and control, to include discussions concerning the use of permissive action links and post-launch destruct mechanisms on all intercontinental-range ballistic missiles of the two nations;

''(2) reductions that enhance stability in strategic weapons of the United States and Russia to levels below the limitations of the Strategic Arms Reduction Talks (START) Treaties, to include the downloading of multiple warhead ballistic missiles, as appropriate; and

''(3) reinvigorated efforts to halt the proliferation of ballistic missiles and weapons of mass destruction.

''SEC. 233. IMPLEMENTATION OF GOAL.

''(a) IN GENERAL.—To implement the goal specified in section 232(a), the Congress—

''(1) directs the Secretary of Defense to take the actions specified in subsection (b); and

''(2) urges the President to take the actions described in subsection (c).

''(b) ACTIONS OF THE SECRETARY OF DEFENSE.—

''(1) THEATER MISSILE DEFENSE SYSTEMS.—The Secretary of Defense shall develop advanced theater missile defense systems for deployment in compliance with the ABM Treaty, including any protocol or amendment thereto.

''(2) INITIAL ABM DEPLOYMENT.—The Secretary shall conduct a research and development program to develop and maintain the option to deploy a cost-effective, operationally effective, and ABM Treaty-compliant antiballistic missile system at a single site as the initial step toward deployment of an antiballistic missile system described in section 232(a)(1) designed to protect the United States against limited ballistic missile threats, including accidental or unauthorized launches or Third World attacks. The system components to be developed shall include—

''(A) 100 ground-based interceptors, the design of which is to be determined by competition and downselection for the most capable interceptor or interceptors;

''(B) fixed, ground-based, antiballistic missile battle management radars; and

''(C) optimum utilization of space-based sensors, including sensors capable of cueing ground-based antiballistic missile interceptors and providing initial targeting vectors, and other sensor systems that are not prohibited by the ABM Treaty, including specifically the Ground Surveillance and Tracking System.

''(c) PRESIDENTIAL ACTIONS.—Congress urges the President to pursue immediate discussions with Russia and other successor states of the former Soviet Union, as appropriate, on the feasibility of, and mutual interest in, amendments to the ABM Treaty to permit—

''(1) clarification of the distinctions for the purposes of the ABM Treaty between theater missile defenses and anti-ballistic missile defenses, including interceptors, radars, and other sensors; and

''(2) increased use of space-based sensors for direct battle management.

''[SEC. 234. Repealed. Pub. L. 103–160, div. A, title II, § 243(e), Nov. 30, 1993, 107 Stat. 1606.]

''[SECS. 235 to 237. Repealed. Pub. L. 103–337, div. A, title II, § 233(1), Oct. 5, 1994, 108 Stat. 2700.]

''SEC. 238. REVIEW OF FOLLOW-ON DEPLOYMENT OPTIONS.

''Once development testing of components for a Limited Defense System has begun, the President and the Congress shall assess the progress in the ABM Treaty amendments negotiation called for under section 233(c) and shall consider the options available to the United States as now exist under the ABM Treaty. To assist in this review process, the President shall submit to the Congress not later than May 1, 1994, an interim report on the progress of the negotiations, and shall submit to the Congress additional interim reports on the progress of such negotiations at six-month intervals thereafter until such time as the President notifies the Congress that such negotiations have been concluded or terminated.

''SEC. 239. ABM TREATY DEFINED.

''For purposes of this part, the term 'ABM Treaty' means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed in Moscow on May 26, 1972.

''SEC. 240. INTERPRETATION.

''Nothing in this part may be construed to imply—

''(1) congressional authorization for development, testing, or deployment of anti-ballistic missile systems in violation of the ABM Treaty, including any protocol or amendment to that treaty; or

''(2) final congressional authorization for deployment of anti-ballistic missile systems in compliance with the ABM Treaty.''

Similar provisions were contained in the following prior authorization act:

Pub. L. 101–510, div. A, title II, § 221, Nov. 5, 1990, 104 Stat. 1511.

STRETCHOUT OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 100–456, div. A, title I, § 117, 102 Stat. 1933, provided that:

''(a) STRETCHOUT IMPACT STATEMENT.—The Secretary of Defense shall submit to Congress, at the same time the budget for any fiscal year is submitted to Congress under section 1105 of title 31, United States Code, a statement of what the effect would be during the fiscal year for which the budget is submitted of the stretchout of a major defense acquisition program if either of the following applies with respect to that program:

''(1) The final year of procurement scheduled for the program at the time the statement is submitted is more than two years later than the final year of procurement for the program as specified in the most recent annual Selected Acquisition Report for that program.

''(2) The proposed procurement quantity for that fiscal year is less than 90 percent of the procurement quantity proposed for the same fiscal year in the most recent annual Selected Acquisition Report for that program.

''(b) CHANGES IN CERTAIN COSTS TO BE INCLUDED.—A statement under subsection (a) with respect to a major defense acquisition program shall contain an estimate of the projected increase in unit cost and the projected increase in total program cost for the system being procured under the program compared to the program specified in the most recent annual Selected Acquisition Report for that program.

''(c) IDENTIFICATION OF STRETCHED OUT PROGRAMS.—The Secretary shall include in a statement under subsection (a) identification of all major acquisition programs for which the proposed procurement quantity for that fiscal year is less than 80 percent of the baseline production rate for that fiscal year, as defined by sec-

tion 2432(c)(3)(C)(i) of title 10, United States Code, and an explanatory statement for the lower procurement rate for each program.

''(d) LIMITATIONS.—(1) Subsection (a) shall apply only for major defense acquisition programs for which procurement is proposed at a rate of six or more units per year.

''(2) Subsection (a) shall not apply if the total procurement quantity has been increased, compared to the program specified in the most recent annual Selection Acquisition Report for that program, and subsection (a)(2) does not apply.

''(e) REPORT ON ESTABLISHING MAXIMUM PRODUCTION RATES.—Not later than March 15, 1989, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the feasibility and effect of establishing maximum production rates by December 1990 for certain major defense acquisition programs. The report shall identify and discuss ten programs, of which seven shall be programs for the procurement of conventional, tactical, or dual-capable systems.

''(f) DEFINITION.—For purposes of this section, the term 'major defense acquisition program' has the meaning given that term in section 2430 of title 10, United States Code.''

PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES

Section 222 of Pub. L. 100–180 provided that:

''(a) SDI CONTRACTS WITH FOREIGN ENTITIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the purpose of entering into or carrying out any contract with a foreign government or a foreign firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Strategic Defense Initiative program.

''(b) TEMPORARY SUSPENSION OF PROHIBITION UPON CERTIFICATION OF THE SECRETARY OF DEFENSE.—The prohibition in subsection (a) shall not apply to a contract in any fiscal year if the Secretary of Defense certifies to Congress in writing at any time during such fiscal year that the research, development, testing, or evaluation to be performed under such contract cannot be competently performed by a United States firm at a price equal to or less than the price at which the research, development, testing, or evaluation would be performed by a foreign firm.

''(c) EXCEPTIONS FOR CERTAIN CONTRACTS.—The prohibition in subsection (a) shall not apply to a contract awarded to a foreign government or foreign firm if—

''(1) the contract is to be performed within the United States;

''(2) the contract is exclusively for research, development, test, or evaluation in connection with anti-tactical ballistic missile systems; or

''(3) that foreign government or foreign firm agrees to share a substantial portion of the total contract cost.

''(d) DEFINITIONS.—In this section:

''(1) The term 'foreign firm' means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

''(2) The term 'United States firm' means a business entity other than a foreign firm.

''(e) TRANSITION.—The prohibition in subsection (a) shall not apply to a contract entered into before the date of the enactment of this Act [Dec. 4, 1987].''

LIMITATION ON TRANSFER OF CERTAIN MILITARY TECHNOLOGY TO INDEPENDENT STATES OF FORMER SOVIET UNION

Section 223 of Pub. L. 100–180, as amended by Pub. L. 103–199, title II, §203(a)(1), Dec. 17, 1993, 107 Stat. 2321, provided that: ''Military technology developed with funds appropriated or otherwise made available for the Ballistic Missile Defense Program may not be transferred (or made available for transfer) to Russia or any other independent state of the former Soviet Union by the United States (or with the consent of the United States) unless the President determines, and certifies to the Congress at least 15 days prior to any such transfer, that such transfer is in the national interest of the United States and is to be made for the purpose of maintaining peace.''

SDI ARCHITECTURE TO REQUIRE HUMAN DECISION MAKING

Section 224 of Pub. L. 100–180 provided that: ''No agency of the Federal Government may plan for, fund, or otherwise support the development of command and control systems for strategic defense in the boost or post-boost phase against ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative human decision at an appropriate level of authority.''

PROHIBITION ON DEPLOYMENT OF ANTI-BALLISTIC MISSILE SYSTEM UNLESS AUTHORIZED BY LAW

Section 226 of Pub. L. 100–180 provided that: ''The Secretary of Defense may not deploy any anti-ballistic missile system unless such deployment is specifically authorized by law after the date of the enactment of this Act [Dec. 4, 1987].''

ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER TO SUPPORT SDI PROGRAM

Section 227 of Pub. L. 100–180 provided that:

''(a) FINDINGS.—The Congress makes the following findings:

''(1) The Department of Defense requires technical support for issues of system integration related to the Strategic Defense Initiative program.

''(2) The Strategic Defense Initiative Organization, after assessing alternative types of organizations for the provision of such technical support to the Strategic Defense Initiative program (including Government organizations, profit and nonprofit entities (including existing federally funded research and development centers), a new division within an existing federally funded research and development center, a new federally funded research and development center, colleges and universities, and private nonprofit laboratories), determined that a new federally funded research and development center (hereinafter in this section referred to as an 'FFRDC') would be the type of organization most appropriate for the provision of such technical support to the Strategic Defense Initiative program.

''(3) In providing such technical support to the SDI program, the new FFRDC should provide critical evaluation and rigorous and objective analysis of technologies, systems, and architectures that are candidates for use in the SDI program.

''(4) Competitive selection of a contractor to establish and operate such an FFRDC to support the Strategic Defense Initiative program is one way to enhance the prospects for independent and objective evaluation of system integration issues within the Strategic Defense Initiative program.

''(b) AUTHORITY TO CONTRACT FOR FFRDC.—The Secretary of Defense, using funds appropriated to the Department of Defense for the Strategic Defense Initiative program, may enter into a contract to provide for the establishment and operation of a federally funded research and development center to provide independent and objective technical support to the Strategic Defense Initiative program. Such a contract may not be awarded before October 1, 1989.

''(c) CONTRACT AWARD REQUIREMENTS.—(1) A contract under subsection (b) shall be awarded using competitive procedures which emphasize cost considerations.

''(2) The Secretary of Defense shall solicit proposals for such contract from existing federally funded research and development centers, from universities,

from commercial entities, and from appropriate new organizations and shall make maximum efforts to obtain more than one proposal for such contract.

''(3) The Secretary shall submit the three best contract proposals (as determined by the Secretary), together with a copy of the proposed sponsoring agreement for the new FFRDC, for review by three persons designated by the Defense Science Board from a list of six or more persons submitted by the National Academy of Sciences. The persons performing the review—

''(A) shall evaluate the extent to which each proposal and the proposed sponsoring agreement would foster competent and objective technical advice for the Strategic Defense Initiative Program; and

''(B) shall report their evaluation of each such proposal and of the proposed sponsoring agreement to the Secretary.

''(4) Before awarding a contract under subsection (b), and not sooner than March 30, 1989, the Secretary shall submit to Congress—

''(A) a copy of the proposed final contract; and

''(B) a copy of the proposed final sponsoring agreement relating to the operation of the new FFRDC.

''(5)(A) The Secretary shall then withhold the award of such contract and the approval of such sponsoring agreement for a period of at least 30 days of continuous session of Congress beginning on the day after the date on which Congress receives the copies referred to in paragraph (4).

''(B) For purposes of subparagraph (A), the continuity of a session of Congress is broken only by an adjournment sine die at the end of the second regular session of that Congress. In computing the 30-day period for such purposes, days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded.

''(d) REQUIREMENTS APPLICABLE TO FFRDC.—The Secretary of Defense shall—

''(1) require that the contract referred to in subsection (b) include a provision stating that no officer or employee of the Department of Defense shall have the authority to veto the employment of any person selected to serve as an officer or employee of the new FFRDC;

''(2) require that at least 5 percent of the total amount of funds available for the new FFRDC shall be set aside for independent research to be performed by the staff of the new FFRDC under the direction of the chief executive officer of the new FFRDC;

''(3) impose a limitation on the compensation payable to each senior executive of the new FFRDC for services performed for the new FFRDC so that such compensation shall be comparable to the amount of compensation payable to senior executives of comparable federally funded research and development centers for similar services;

''(4) require that the new FFRDC publicly disclose the salary of its chief executive officer;

''(5) prohibit current or former members of the Strategic Defense Initiative Advisory Committee from serving as members of the Board of Trustees of the FFRDC if such members constitute 10 or more percent of the Board of Trustees or from serving as officers of the new FFRDC;

''(6) require that the contract referred to in subsection (b) include a provision prohibiting members of such Board of Trustees from serving as officers of the new FFRDC, except that a Board member may serve as the President of the new FFRDC if the Board is comprised of 10 or more members;

''(7) require that the contract referred to in subsection (b) include a provision prohibiting the new FFRDC from employing any person who, as a Federal employee or member of the Armed Forces, served in the Strategic Defense Initiative Organization within two years before the date on which such person is to be employed by the new FFRDC; and

''(8) require that any contract referred to in subsection (b) require that the Board of Trustees of the new FFRDC be comprised of individuals who represent a reasonable cross-section of views on the engineering and scientific issues associated with the Strategic Defense Initiative Program.

''(e) FUNDING.—The Secretary of Defense shall provide that all funds for the new FFRDC within the Department of Defense budget for any fiscal year shall be separately identified and set forth in the budget presentation materials submitted to Congress for that fiscal year.

''(f) SUNSET PROVISION.—No Federal funds may be provided to the new FFRDC after the end of the five-year period beginning on the date of the award of the first contract awarded to the FFRDC under this section.''

LIMITATION ON ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER FOR STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 99–661, div. A, title II, § 213, Nov. 14, 1986, 100 Stat. 3841, provided that:

''(a) LIMITATION.—The Secretary of Defense may not obligate or expend any funds for the purpose of operating a Federally funded research and development center that is established for the support of the Strategic Defense Initiative Program after the date of the enactment of this Act [Nov. 14, 1986] unless—

''(1) the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report with respect to such proposed center that provides the information described in subsection (b); and

''(2) funds are specifically authorized to be appropriated for such purpose after the date of the enactment of this Act in an Act other than—

''(A) an appropriations Act; or

''(B) a continuing resolution.

''(b) CONTENT OF REPORT.—A report submitted under subsection (a)(1) with respect to a proposed center shall include a discussion of—

''(1) the ability of existing Federally funded research and development centers, Federal research laboratories, and private contractors to perform the objectives of technological integration and evaluation required by the Strategic Defense Initiative Organization;

''(2) the comparative cost of having the proposed work performed by—

''(A) the Strategic Defense Initiative Organization;

''(B) Federally funded research and development centers in existence on the date of the enactment of this Act [Nov. 14, 1986];

''(C) by Federal research laboratories;

''(D) by private contractors; or

''(E) by such center;

''(3) whether such center is intended to be—

''(A) primarily a study and analysis center; or

''(B) primarily a system engineering/system integration center;

''(4) whether such center will be required or authorized to enter into contracts under which research projects would be performed by other Federally funded research and development centers, Federal research laboratories, or private contractors;

''(5) whether the contract to operate such center will be awarded on a competitive basis;

''(6) whether proposals with respect to the operation of such center—

''(A) will be considered by the appropriate Defense Agency; and

''(B) will be subjected to review by persons to be elected by the National Academy of Sciences;

''(7) whether such center will be designed to prevent even the possibility of an appearance of a conflict of interest—

''(A) by prohibiting any officer, employee, or member of the governing body of such center from holding any position with—

''(i) the Strategic Defense Initiative Organization; or

''(ii) a private contractor that has a substantial interest in the development of the Strategic Defense Initiative; and

''(B) by prohibiting more than one-half of the members of the governing body of the proposed Federally Funded Research Center from simultaneously holding any position with the Strategic Defense Initiative Advisory Committee or any similar body which provides technological, scientific, or strategic advice to the Department of Defense about the Strategic Defense Initiative;

''(8) whether other actions will be taken to avoid possible conflict of interest situations within such center;

''(9) the role of the Department of Defense in—

''(A) the selection of the staff of such center; and

''(B) the internal organization of such center; and

''(10) whether a prescribed minimum percentage of the annual budget of such center will be set aside for research to be conducted independently of the Department of Defense.

''(c) COMPTROLLER GENERAL REPORT.—The Comptroller General of the United States shall also submit a report to Congress providing an analysis of the items in subsection (b) as appropriate.''

SHOULD-COST ANALYSES

Pub. L. 99–145, title IX, §915, Nov. 8, 1985, 99 Stat. 688, as amended by Pub. L. 100–26, §11(a)(2), Apr. 21, 1987, 101 Stat. 288, which required Secretary of Defense to submit to Congress an annual report setting forth Secretary's plan for performance during next fiscal year of cost analyses for major defense acquisition programs for purpose of determining how much production of covered systems under such programs should cost, was repealed by Pub. L. 101–510, div. A, title XIII, §1322(d)(2), Nov. 5, 1990, 104 Stat. 1672.

REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR DEPLOYMENT OF STRATEGIC DEFENSE INITIATIVE SYSTEM

Pub. L. 99–145, title II, §222, Nov. 8, 1985, 99 Stat. 613, provided that: ''A strategic defense system developed as a consequence of research, development, test, and evaluation conducted on the Strategic Defense Initiative program may not be deployed in whole or in part unless—

''(1) the President determines and certifies to Congress in writing that—

''(A) the system is survivable (that is, the system is able to maintain a sufficient degree of effectiveness to fulfill its mission, even in the face of determined attacks against it); and

''(B) the system is cost effective at the margin to the extent that the system is able to maintain its effectiveness against the offense at less cost than it would take to develop offensive countermeasures and proliferate the ballistic missiles necessary to overcome it; and

''(2) funding for the deployment of such system has been specifically authorized by legislation enacted after the date on which the President makes the certification to Congress.''

ANNUAL REPORT ON BALLISTIC MISSILE DEFENSE PROGRAM

Pub. L. 101–189, div. A, title II, §224, Nov. 29, 1989, 103 Stat. 1398, as amended by Pub. L. 103–160, div. A, title II, §240, Nov. 30, 1993, 107 Stat. 1603, provided that:

''(a) REPORT REQUIRED.—Not later than March 15 of each year, the Secretary of Defense shall transmit to Congress a report (in both unclassified and classified form) on the programs and projects that constitute the Ballistic Missile Defense program and on any other program or project relating to defense against ballistic missiles.

''(b) CONTENT OF REPORT.—Each such report shall include the following:

''(1) A statement of the basic strategy for research and development being pursued by the Department of Defense under the Ballistic Missile Defense program (BMD), including the relative priority being given, respectively, to the development of near-term deployment options and research on longer-term technological approaches.

''(2) A detailed description of each program or project which is included in the Ballistic Missile Defense program or which otherwise relates to defense against strategic ballistic missiles, including a technical evaluation of each such program or project and an assessment as to when each can be brought to the stage of full-scale engineering development (assuming funding as requested or programmed).

''(3) A clear definition of the objectives of each planned deployment phase of the Ballistic Missile Defense program or defense against strategic ballistic missiles.

''(4) An explanation of the relationship between each such phase and each program and project associated with the proposed architecture for that phase.

''(5) The status of consultations with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning research being conducted in the Ballistic Missile Defense program.

''(6) A statement of the compliance of the planned BMD development and testing programs with existing arms control agreements, including the 1972 Anti-Ballistic Missile Treaty.

''(7) A review of possible countermeasures of the Soviet Union to specific BMD programs, an estimate of the time and cost required for the Soviet Union to develop each such countermeasure, and an evaluation of the adequacy of the BMD programs described in the report to respond to such countermeasures.

''(8) Details regarding funding of programs and projects for the Ballistic Missile Defense program (including the amounts authorized, appropriated, and made available for obligation after undistributed reductions or other offsetting reductions were carried out), as follows:

''(A) The level of requested and appropriated funding provided for the current fiscal year for each program and project in the Ballistic Missile Defense program budgetary presentation materials provided to Congress.

''(B) The aggregate amount of funding provided for previous fiscal years (including the current fiscal year) for each such program and project.

''(C) The amount requested to be appropriated for each such program and project for the next fiscal year.

''(D) The amount programmed to be requested for each such program and project for the following fiscal year.

''(E) The amount required to reach the next significant milestone for each demonstration program and each major technology program.

''(9) Details on what Ballistic Missile Defense program technologies can be developed or deployed within the next 5 to 10 years to defend against significant military threats and help accomplish critical military missions. The missions to be considered include the following:

''(A) Defending elements of the Armed Forces abroad and United States allies against tactical ballistic missiles, particularly new and highly accurate shorter-range ballistic missiles of the Soviet Union armed with conventional, chemical, or nuclear warheads.

''(B) Defending against an accidental launch of strategic ballistic missiles against the United States.

''(C) Defending against a limited but militarily effective attack by the Soviet Union aimed at disrupting the National Command Authority or other valuable military assets.

''(D) Providing sufficient warning and tracking information to defend or effectively evade possible

attacks by the Soviet Union against military satellites, including those in high orbits.

''(E) Providing early warning and attack assessment information and the necessary survivable command, control, and communications to facilitate the use of United States military forces in defense against possible conventional or strategic attacks by the Soviet Union.

''(F) Providing protection of the United States population from a nuclear attack by the Soviet Union.

''(G) Any other significant near-term military mission that the application of BMD technologies might help to accomplish.

''(10) For each of the near-term military missions listed in paragraph (9), the report shall include the following:

''(A) A list of specific program elements of the Ballistic Missile Defense program that are pertinent to such mission.

''(B) The Secretary's estimate of the initial operating capability dates for the architectures or systems to accomplish such missions.

''(C) The Secretary's estimate of the level of funding necessary for each program to reach those initial operating capability dates.

''(D) The Secretary's estimate of the survivability and cost effectiveness at the margin of such architectures or systems against current and projected threats from the Soviet Union.''

Similar provisions were contained in the following prior authorization act:

Pub. L. 100–180, div. A, title II, § 231(a), Dec. 4, 1987, 101 Stat. 1059.

Pub. L. 98–525, title XI, § 1102, Oct. 19, 1984, 98 Stat. 2580, which required Secretary of Defense, at time of his annual budget presentation to Congress beginning with fiscal year 1986 and ending with fiscal year 1990, to transmit to Committees on Armed Services and Foreign Affairs of House of Representatives and Committees on Armed Services and Foreign Relations of Senate, a detailed report on programs that constitute SDI, was repealed by Pub. L. 100–180, div. A, title II, § 231(b), Dec. 4, 1987, 101 Stat. 1060.

PLANS FOR MANAGEMENT OF TECHNICAL DATA AND COMPUTER CAPABILITY IMPROVEMENTS

Section 1252 of Pub. L. 98–525 directed Secretary of Defense, not later than one year after Oct. 19, 1984, to develop a plan for an improved system for the management of technical data relating to any major system of the Department of Defense and, not later than 5 years after Oct. 19, 1984, to complete implementation of the management plan, directed Comptroller General, not later than 18 months after Oct. 19, 1984, to transmit to Congress a report evaluating the plan developed, and directed Secretary of Defense, not later than 180 days after Oct. 19, 1984, to transmit to Congress a plan to improve substantially the computer capability of each of the military departments and of the Defense Logistics Agency to store and access rapidly data that is needed for the efficient procurement of supplies.

CONSULTATION WITH ALLIES ON STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8104], Oct. 12, 1984, 98 Stat. 1904, 1942, provided that: ''It is the sense of the Congress that—(a) the President shall inform and make every effort to consult with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning the research being conducted in the Strategic Defense Initiative program. (b) The Secretary of Defense, in coordination with the Secretary of State and the Director of the Arms Control and Disarmament Agency, shall at the time of the submission of the annual budget presentation materials for each fiscal year beginning after September 30, 1984, report to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services [now National Security], and Foreign Affairs [now International Relations] of the House of Representatives on the status of the consultations referred to under subsection (a).''

ANTISATELLITE WEAPONS TEST

Pub. L. 100–180, div. A, title II, § 208, Dec. 4, 1986, 101 Stat. 1048, provided that:

''(a) TESTING MORATORIUM.—The Secretary of Defense may not carry out a test of the Space Defense System (antisatellite weapon) involving the F–15 launched miniature homing vehicle against an object in space until the President certifies to Congress that the Soviet Union has conducted, after the date of the enactment of this Act [Dec. 4, 1987], a test against an object in space of a dedicated antisatellite weapon.

''(b) EXPIRATION.—The prohibition in subsection (a) expires on October 1, 1988.''

Pub. L. 99–661, div. A, title II, § 231, Nov. 14, 1986, 100 Stat. 3847, provided that:

''(a) ASAT TESTING MORATORIUM.—The Secretary of Defense may not carry out a test of the Space Defense System (anti-satellite weapon) against an object in space until the President certifies to Congress that the Soviet Union has conducted, after the date of the enactment of this Act [Nov. 14, 1986], a test against an object in space of a dedicated anti-satellite weapon.

''(b) EXPIRATION.—The prohibition in subsection (a) expires on October 1, 1987.''

Similar provisions were contained in the following prior acts:

Pub. L. 99–500, § 101(c) [title XI, § 1101], Oct. 18, 1986, 100 Stat. 1783–82, 1783–177, and Pub. L. 99–591, § 101(c) [title XI, § 1101], Oct. 30, 1986, 100 Stat. 3341–82, 3341–177.

Pub. L. 99–190, § 101(b) [title VIII, § 8097], Dec. 19, 1985, 99 Stat. 1185, 1219.

Pub. L. 99–145, title II, § 208(a), (b), Nov. 8, 1985, 99 Stat. 610, provided that:

''(a) REQUIREMENT REGARDING THE USE OF FUNDS.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President has made a determination and a certification to the Congress as provided in section 8100 of the Department of Defense Appropriations Act, 1985 [set out as a note below] (as contained in section 101(h) of Public Law 98–473 (98 Stat. 1941)).

''(b) LIMITATION ON NUMBER OF TESTS.—Not more than three tests described in subsection (a) may be conducted before October 1, 1986.''

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8100], Oct. 12, 1984, 98 Stat. 1904, 1941, provided that:

''(a) Notwithstanding any other provision of law, none of the funds appropriated or made available in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President determines and certifies to Congress—

''(1) that the United States is endeavoring, in good faith, to negotiate with the Soviet Union a mutual and verifiable agreement with the strictest possible limitations on anti-satellite weapons consistent with the national security interests of the United States;

''(2) that, pending agreement on such strict limitations, testing against objects in space of the F–15 launched miniature homing vehicle anti-satellite warhead by the United States is necessary to avert clear and irrevocable harm to the national security;

''(3) that such testing would not constitute an irreversible step that would gravely impair prospects for negotiations on anti-satellite weapons; and

''(4) that such testing is fully consistent with the rights and obligations of the United States under the Anti-Ballistic Missile Treaty of 1972 as those rights and obligations exist at the time of such testing.

''(b) During fiscal year 1985, funds appropriated for the purpose of testing the F–15 launched miniature

homing vehicle anti-satellite warhead may not be used to conduct more than three tests of that warhead against objects in space.

''(c) The limitation on the expenditure of funds provided by subsection (a) of this section shall cease to apply fifteen calendar days after the date of the receipt by Congress of the certification referred to in subsection (a) or March 1, 1985, whichever occurs later.''

Similar provisions were contained in the following prior authorization act:

Pub. L. 98–94, title XI, §1235, Sept. 24, 1983, 97 Stat. 695; as amended by Pub. L. 98–525, title II, §205, Oct. 19, 1984, 98 Stat. 2509.

EAST COAST TRIDENT BASE AND MX MISSILE SYSTEM SITES; USE OF FUNDS APPROPRIATED TO DEPARTMENT OF DEFENSE; ASSISTANCE TO NEARBY COMMUNITIES TO HELP MEET COSTS OF INCREASED MUNICIPAL SERVICES

Pub. L. 96–418, title VIII, §802, Oct. 10, 1980, 94 Stat. 1775, as amended by Pub. L. 97–99, title IX, §904(b), Dec. 23, 1981, 95 Stat. 1382; Pub. L. 98–115, title VIII, §805, Oct. 11, 1983, 97 Stat. 785; Pub. L. 101–510, div. A, title XIII, §1322(f), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may assist communities located near MX Missile System sites and communities located near the East Coast Trident Base, and the States in which such communities are located, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, or operation of the MX Missile System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of such increased need for such services and facilities.

''(b)(1) Whenever possible, the Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary may—

''(A) supplement funds made available under existing Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary;

''(B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the costs under such programs;

''(C) guarantee State or municipal indebtedness, and make interest payments, in whole or in part, for State or municipal indebtedness, for improved public facilities related to the MX Missile System site or the East Coast Trident Base, as the case may be; and

''(D) make direct grants to or on behalf of communities described in subsection (a) in cases in which Federal programs (or funds for such programs) do not exist or are not sufficient to meet the costs of providing increased municipal services and facilities to the residents of such communities.

''(2) The head of each department and agency shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

''(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, may provide assistance under this section in anticipation of the work to be carried out in connection with the MX Missile System sites or the East Coast Trident Base, as the case may be.

''(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration—

''(1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population;

''(2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community;

''(3) the initial capitalization required for municipal sewer and water systems;

''(4) the initial operating cost for upgrading municipal services; and

''(5) such other pertinent factors as the Secretary considers appropriate.

''(d) Funds appropriated to the Department of Defense for carrying out the MX Missile System deployment program and the East Coast Trident Base may, to the extent specifically authorized in Military Construction Authorization Acts, be used by the Secretary to provide assistance under this section.''

MX MISSILE AND BASING MODE

Pub. L. 96–342, title II, §202, Sept. 8, 1980, 94 Stat. 1079, provided that:

''(a) The Congress finds that a survivable land-based intercontinental ballistic missile (ICBM) system is vital to the security of the United States and to a stable strategic balance between the United States and the Soviet Union and that timely deployment of a new basing mode is essential to the survivability of this Nation's land-based intercontinental ballistic missiles. It is, therefore, the purpose of this section to commit the Congress to the development and deployment of the MX missile system, consisting of 200 missiles and 4,600 hardened shelters, and to insure that deployment of the entire MX system is carried out as soon as practicable.

''(b) The Secretary of Defense shall proceed immediately with the full-scale engineering development of the MX missile and a Multiple Protective Structure (MPS) basing mode and shall continue such development in a manner that will achieve an Initial Operational Capability of such missile and basing mode not later than December 31, 1986.

''(c) Notwithstanding any other provision of law, the initial phase of construction shall be limited to 2,300 protective shelters for the MX missile in the initial deployment area.

''(d) In accordance with the finding of the Congress expressed in subsection (a), a full system of at least 4,600 protective shelters may be deployed in the initial deployment area if, after completion of a study to be conducted by the Secretary of Defense of an alternate site for a portion of the system, it is determined by the Congress that adverse cost, military considerations, or other reasons preclude split basing.''

DEVELOPMENT OF MX MISSILE SYSTEM

Pub. L. 96–29, title II, §202, June 27, 1979, 93 Stat. 79, provided that:

''(a) It is the sense of the Congress that maintaining a survivable land-based intercontinental ballistic missile system is vital to the security of the United States and that development of a new basing mode for land-based intercontinental ballistic missiles is necessary to assure the survivability of the land-based system. To this end, the development of the MX missile, together with a new basing mode for such missile, should proceed so as to achieve Initial Operational Capability (IOC) for both such missile and such basing mode at the earliest practicable date.

''(b) In addition, it is the sense of the Congress that the basing mode for the MX missile should be restricted to location on the least productive land available that is suitable for such purpose.

''(c) In accordance with the sense of Congress expressed in subsection (a), the Secretary of Defense shall proceed immediately with full scale engineering development of the missile basing mode known as the Mul-

tiple Protective Structure (MPS) system concurrently with full scale engineering development of the MX missile, unless and until the Secretary of Defense certifies to the Congress that an alternative basing mode is militarily or technologically superior to, and is more cost effective than, the MPS system or the President informs the Congress that in his view the MPS system is not consistent with United States national security interests.

''(d) Nothing in this section shall be construed to prohibit or restrict the study of alternative basing modes for land-based intercontinental ballistic missiles.''

REPORTS TO CONGRESS OF ACQUISITIONS FOR MAJOR DEFENSE SYSTEMS

Section 811 of Pub. L. 94–106, as amended by Pub. L. 96–107, title VIII, § 809, Nov. 9, 1979, 93 Stat. 815; Pub. L. 97–86, title IX, § 917(e), Dec. 1, 1981, 95 Stat. 1131, which required reports to Congress respecting acquisitions of major defense systems, including total program acquisition unit costs, was repealed by Pub. L. 97–252, title XI, § 1107(b), Sept. 8, 1982, 96 Stat. 746, effective Jan. 1, 1983, as provided in section 1107(c) of Pub. L. 97–252, set out as an Effective Date note under section 2432 of this title. See sections 2432 and 2433 of this title.

TRIDENT SUPPORT SITE, BANGOR, WASHINGTON; FINANCIAL AID TO LOCAL COMMUNITIES; REPORTS

Section 608 of Pub. L. 93–552, title VI, Dec. 27, 1974, 88 Stat. 1763, provided:

''(a) The Secretary of Defense is authorized to assist communities located near the TRIDENT Support Site Bangor, Washington, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the TRIDENT Weapon System and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities.

''(b) The Secretary of Defense shall carry out the provisions of this section through existing Federal programs. The Secretary is authorized to supplement funds made available under such Federal programs to the extent necessary to carry out the provisions of this section, and is authorized to provide financial assistance to communities described in subsection (a) of this section to help such communities pay their share of the costs under such programs. The heads of all departments and agencies concerned shall cooperate fully with the Secretary of Defense in carrying out the provisions of this section on a priority basis.

''(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary of Defense shall consult with the head of the department or agency of the Federal Government concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, and (3) such other pertinent factors as the Secretary of Defense deems appropriate.

''(d) Any funds appropriated to the Department of Defense for the fiscal year beginning July 1, 1974, for carrying out the TRIDENT Weapon System shall be utilized by the Secretary of Defense in carrying out the provisions of this section to the extent that funds are unavailable under other Federal programs. Funds appropriated to the Department of Defense for any fiscal year beginning after June 30, 1975, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provision of this section to the extent that funds are unavailable under other Federal programs.

''(e) The Secretary shall transmit to the Committees on Armed Services of the Senate and the House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] semiannual reports indicating the total amount expended in the case of each local community which was provided assistance under the authority of this section during the preceding six-month period, the specific projects for which assistance was provided during such period, and the total amount provided for each such project during such period.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2432 of this title; title 22 section 2795b.

§ 2432. Selected Acquisition Reports

(a) In this section:

(1) The term ''program acquisition unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) The term ''procurement unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) The term ''major contract'', with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished equipment contracts under the program that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(4) The term ''full life-cycle cost'', with respect to a major defense acquisition program, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(b)(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on current major defense acquisition programs. Except as provided in paragraphs (2) and (3), each such report shall include a status report on each defense acquisition program that at the end of such quarter is a major defense acquisition program. Reports under this section shall be known as Selected Acquisition Reports.

(2) A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been—

(A) less than a 15 percent increase in program acquisition unit cost and current procurement unit cost; and

(B) less than a six-month delay in any program schedule milestone shown in the Selected Acquisition Report.

(3)(A) The Secretary of Defense may waive the requirement for submission of Selected Acquisition Reports for a program for a fiscal year if—

(i) the program has not entered engineering and manufacturing development;

(ii) a reasonable cost estimate has not been established for such program; and

(iii) the system configuration for such program is not well defined.

(B) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a written notification of each waiver under subparagraph (A) for a program for a fiscal year not later than 60 days before the President submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

(c)(1) Each Selected Acquisition Report for the first quarter for a fiscal year shall include—

(A) the same information, in detailed and summarized form, as is provided in reports submitted under section 2431 of this title;

(B) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted; and

(C) such other information as the Secretary of Defense considers appropriate.

(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the Committees on Armed Services of the Senate and House of Representatives the information such Committees need to perform their oversight functions. Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.

(3) In addition to the material required by paragraphs (1) and (2), each Selected Acquisition Report for the first quarter of a fiscal year shall include the following:

(A) A full life-cycle cost analysis for each major defense acquisition program included in the report that is in the engineering and manufacturing development stage or has completed that stage. The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.

(B) If the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system.

(4) Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

(d)(1) Each Selected Acquisition Report for the second, third, and fourth quarters of a fiscal year shall include—

(A) with respect to each major defense acquisition program that was included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (e); and

(B) with respect to each major defense acquisition program that was not included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (c).

(2) Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be known as Quarterly Selected Acquisition Reports.

(e) Information to be included under this subsection in a Quarterly Selected Acquisition Report with respect to a major defense acquisition program is as follows:

(1) The quantity of items to be purchased under the program.

(2) The program acquisition cost.

(3) The program acquisition unit cost.

(4) The current procurement cost for the program.

(5) The current procurement unit cost for the program.

(6) The reasons for any change in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost or in program schedule from the previous Selected Acquisition Report.

(7) The major contracts under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(8) The completion status of the program (A) expressed as the percentage that the number of years for which funds have been appropriated for the program is of the number of years for which it is planned that funds will be appropriated for the program, and (B) expressed as the percentage that the amount of funds that have been appropriated for the program is of the total amount of funds which it is planned will be appropriated for the program.

(9) Program highlights since the last Selected Acquisition Report.

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 60 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter.

(g) The requirements of this section with respect to a major defense acquisition program shall cease to apply after 90 percent of the items to be delivered to the United States under the program (shown as the total quantity of items to be purchased under the program in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program have been made.

(h)(1) Total program reporting under this section shall apply to a major defense acquisition program when funds have been appropriated for such and the Secretary of Defense has decided to proceed to engineering and manufacturing development of such program. Reporting may be

limited to the development program as provided in paragraph (2) before a decision is made by the Secretary of Defense to proceed to engineering and manufacturing development if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives of the intention to submit a limited report under this subsection not less than 15 days before a report is due under this section.

(2) A limited report under this subsection shall include the following:

(A) The same information, in detail and summarized form, as is provided in reports submitted under subsections (b)(1) and (b)(3) of section 2431 of this title.

(B) Reasons for any change in the development cost and schedule.

(C) The major contracts under the development program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(D) The completion status of the development program expressed—

(i) as the percentage that the number of years for which funds have been appropriated for the development program is of the number of years for which it is planned that funds will be appropriated for the program; and

(ii) as the percentage that the amount of funds that have been appropriated for the development program is of the total amount of funds which it is planned will be appropriated for the program.

(E) Program highlights since the last Selected Acquisition Report.

(F) Other information as the Secretary of Defense considers appropriate.

(3) The submission requirements for a limited report under this subsection shall be the same as for quarterly Selected Acquisition Reports for total program reporting.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; amended Pub. L. 98–525, title XII, § 1242(a), Oct. 19, 1984, 98 Stat. 2606; Pub. L. 99–145, title XII, § 1201, Nov. 8, 1985, 99 Stat. 715; renumbered § 2432 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(13), (g)(7), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(3), (k)(2), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XII, § 1233(a)(1), title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1161, 1175; Pub. L. 101–189, div. A, title VIII, § 811(c), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XIV, §§ 1407(a)–(c), 1484(f)(4), Nov. 5, 1990, 104 Stat. 1681, 1717; Pub. L. 102–25, title VII, § 701(f)(3), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title VIII, § 801(b)(2), title X, § 1061(a)(14), Dec. 5, 1991, 105 Stat. 1412, 1473; Pub. L. 102–484, div. A, title VIII, § 817(c), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(a)(1), (b)–(h), Oct. 13, 1994, 108 Stat. 3328, 3329.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–355, § 3002(a)(1), struck out ''for a fiscal year, reduced by the amount of funds programmed to be available for obligation for such fiscal year for advanced procurement for such program in any subsequent year and increased by any amount appropriated in years before such fiscal year for advanced procurement for such program in such fiscal year'' after ''procurement for the program'' in cl. (A), ''with such funds during such fiscal year'' after ''procured'' in cl. (B), and last sentence which read as follows: ''If for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.''

Subsec. (a)(3). Pub. L. 103–355, § 3002(b), inserted before period at end ''and that is not a firm, fixed price contract''.

Subsec. (a)(4). Pub. L. 103–355, § 3002(c), substituted ''means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.'' for ''has the meaning given the term 'cost of the program' in section 2434(b)(2) of this title.''

Subsec. (b)(3)(A)(i). Pub. L. 103–355, § 3002(h)(1), struck out ''full scale development or'' before ''engineering''.

Subsec. (c)(2). Pub. L. 103–355, § 3002(d), substituted second sentence for former second sentence which read as follows: ''The Secretary of Defense may approve changes in the content of the Selected Acquisition Report if the Secretary provides such Committees with written notification of such changes at least 60 days before the date of the report that incorporates the changes.''

Subsec. (c)(3)(A). Pub. L. 103–355, § 3002(f)(2), (h)(2), substituted ''engineering and manufacturing'' for ''full-scale engineering'' and inserted at end ''The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (c)(3)(C). Pub. L. 103–355, § 3002(e), struck out subpar. (C) which required production information for each major defense acquisition program included in report that is produced at rate of six units or more per year.

Subsec. (c)(5). Pub. L. 103–355, § 3002(f)(1), struck out par. (5) which read as follows: ''The Secretary of Defense shall ensure that paragraph (4) of subsection (a) is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (f). Pub. L. 103–355, § 3002(g), struck out last sentence which read as follows: ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress.''

Subsec. (h)(1). Pub. L. 103–355, § 3002(h)(3), substituted ''engineering and manufacturing'' for ''full-scale engineering'' in two places.

1992—Subsec. (a)(3). Pub. L. 102–484, § 817(c)(1), added par. (3) and struck out former par. (3) which read as follows: ''The term 'major contract', with respect to a major defense acquisition program, means (A) each prime contract under the program, and (B) each associate or Government-furnished equipment contract under the program that is one of the six largest contracts under the program in dollar amount and that is in excess of $40,000,000.''

Subsec. (b)(3). Pub. L. 102–484, § 817(c)(2), added par. (3) and struck out former par. (3) which read as follows: ''A status report on a particular major defense acquisition program need not be included in any Selected Acquisition Report with the approval of the Committees on Armed Services of the Senate and House of Representatives.''

Subsec. (c)(2). Pub. L. 102–484, § 817(c)(3), added sentence at end and struck out former last sentence which

read as follows: ''A change in the content of the Selected Acquisition Report for the first quarter of a fiscal year from the content as reported for the first quarter of the previous fiscal year may not be made until appropriate officials of the Department of Defense consult with such Committees regarding the proposed changes.''

Subsec. (c)(3)(C)(i) to (vii). Pub. L. 102–484, §817(c)(4), added cls. (i) to (vii) and struck out former cls. (i) to (vii) which contained similar specification and estimation requirements.

1991—Subsec. (a)(4). Pub. L. 102–190, §801(b)(2), substituted ''2434(b)(2)'' for ''2434(c)(2)''.

Subsec. (c)(5). Pub. L. 102–25 substituted ''subsection (a)'' for ''section 2432(a) of title 10, United States Code, as added by subsection (a)(2),''.

Subsec. (h)(2)(A). Pub. L. 102–190, §1061(a)(14), substituted ''(b)(1) and (b)(3)'' for ''(c)(1) and (c)(3)''.

1990—Subsec. (a)(4). Pub. L. 101–510, §1407(b), added par. (4).

Subsec. (c)(3). Pub. L. 101–510, §1484(f)(4)(A), substituted ''include the following:'' for ''include—'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 101–510, §1407(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a full life-cycle cost analysis for each major defense acquisition program included in the report that—

''(i) is in the full-scale engineering development stage or has completed that stage; and

''(ii) was first included in a Selected Acquisition Report for a quarter after the first quarter of fiscal year 1985;''.

Subsec. (c)(3)(B). Pub. L. 101–510, §1484(f)(4)(B), (C), substituted ''If'' for ''if'' and a period for ''; and''.

Subsec. (c)(3)(C). Pub. L. 101–510, §1484(f)(4)(B), (D), substituted ''Production'' for ''production'' and ''program) the following:'' for ''program)—'' in introductory provisions, ''Specification'' for ''specification'' in cls. (i) to (iv), ''Estimation'' for ''estimation'' in cls. (v) to (vii), a period for a semicolon in cls. (i) to (v), and a period for ''; and'' in cl. (vi).

Subsec. (c)(5). Pub. L. 101–510, §1407(c), added par. (5).

1989—Subsec. (b)(2)(A). Pub. L. 101–189 substituted ''15 percent increase in program acquisition unit cost and current procurement unit cost'' for ''5 percent change in total program cost''.

1987—Pub. L. 100–180, §1314(a)(1), made technical amendment to directory language of Pub. L. 99–433, §101(a)(5). See 1986 Amendment note below.

Subsec. (a). Pub. L. 100–26, §7(b)(3)(A), as amended by Pub. L. 100–180, §1233(a)(1), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

Pub. L. 100–26, §7(k)(2)(A), inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

Subsec. (a)(2). Pub. L. 100–26, §7(b)(3)(B), substituted ''programmed'' for ''programed'' wherever appearing.

1986—Pub. L. 99–433, §101(a)(5), as amended by Pub. L. 100–180, §1314(a)(1), renumbered section 139a of this title as this section.

Pub. L. 99–433, §110(d)(13), struck out ''Oversight of cost growth in major programs:'' before ''Selected Acquisition Reports'' in section catchline.

Subsec. (a)(3). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(1)], Pub. L. 99–661, §961(a)(1), amended par. (3) identically, inserting provision that if for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.

Subsec. (a)(4). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(2)], Pub. L. 99–661, §961(a)(2), amended par. (4) identically, substituting ''$40,000,000'' for ''$2,000,000''.

Subsec. (b)(2)(B). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(3)], Pub. L. 99–661, §961(a)(3), amended subpar. (B) identically, substituting ''six-month'' for ''three-month''.

Subsec. (c)(1). Pub. L. 99–433, §110(g)(7), substituted ''section 2431'' for ''section 139''.

Subsec. (c)(2). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(4)], Pub. L. 99–661, §961(a)(4), amended subsec. (c) identically, enacting a new par. (2) and striking out former par. (2) which read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall be prepared and submitted with the same content as was used for the Selected Acquisition Report for the first quarter of fiscal year 1984.''

Subsec. (c)(3)(C). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(5)], Pub. L. 99–661, §961(a)(5), amended subpar. (C) identically, inserting in provision preceding cl. (i) ''that is produced at a rate of six units or more per year'' after ''report''.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(6)], Pub. L. 99–661, §961(a)(6), amended section identically, adding subsec. (h).

1985—Subsec. (c). Pub. L. 99–145 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall include (1) the same information, in detailed and summarized form, as is provided in reports submitted under section 139 of this title, (2) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted, and (3) such other information as the Secretary of Defense considers appropriate. Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.''

1984—Subsec. (a)(3). Pub. L. 98–525, §1242(a)(1), substituted ''funds programed to be available for obligation for procurement'' for ''procurement funds appropriated'' and ''of funds programed to be available for obligation'' for ''of funds appropriated''.

Subsec. (a)(4). Pub. L. 98–525, §1242(a)(2), inserted ''and that is in excess of $2,000,000''.

Subsec. (b)(2). Pub. L. 98–525, §1242(a)(3), substituted ''during the period since that report there has been—(A) less than a 5 percent change in total program cost; and (B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report'' for ''there has been no change in program cost, performance, or schedule since the most recent such report''.

Subsec. (f). Pub. L. 98–525, §1242(a)(4), substituted: ''60'' for ''30'', ''45'' for ''30, and ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress'' for ''If a preliminary report is submitted for the comprehensive annual Selected Acquisition Report in any year, the final report shall be submitted within 15 days after the submission of the preliminary report''.

Subsec. (g). Pub. L. 98–525, §1242(a)(5), added subsec. (g).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1407(d) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(a)(8), Apr. 6, 1991, 105 Stat. 119, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to Selected Acquisition Reports submitted under section 2432 of title 10, United States Code, after December 31, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 1233(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Defense

Technical Corrections Act of 1987, Pub. L. 100–26, see section 1233(c) of Pub. L. 100–180, set out as a note under section 101 of this title.

Amendment by section 1314(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title IX, § 961(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 961(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2433 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE

Section 1107(c) of Pub. L. 97–252 provided that: ''Sections 139a and 139b [now 2432 and 2433] of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1983, and shall apply beginning with respect to reports for the first quarter of fiscal year 1983. The repeal made by subsection (b) [repealing Pub. L. 94–106, as amended, set out as Reports to Congress of Acquisitions for Major Defense Systems note under section 2431 of this title] shall take effect on January 1, 1983.''

SELECTED ACQUISITION REPORTS FOR CERTAIN PROGRAMS

Section 127 of Pub. L. 100–180, as amended by Pub. L. 102–484, div. A, title VIII, § 817(a), Oct. 23, 1992, 106 Stat. 2454, provided that:

''(a) SAR COVERAGE FOR ATB, ACM, AND ATA PROGRAMS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives], in accordance with the provisions of subsection (b) of section 2432 of title 10, United States Code, a Selected Acquisition Report with respect to each program referred to in subsection (b), notwithstanding that such a report would not otherwise be required under section 2432 of title 10, United States Code.

''(b) COVERED PROGRAMS.—Subsection (a) applies to the Advanced Technology Bomber program, the Advanced Cruise Missile program, and the Advanced Tactical Aircraft program.

''(c) SELECTED ACQUISITION REPORT DEFINED.—As used in subsection (a), the term 'Selected Acquisition Report' means a report containing the information referred to in section 2432 of title 10, United States Code.''

SENSE OF CONGRESS ON PREPARATION OF CERTAIN ECONOMIC IMPACT AND EMPLOYMENT INFORMATION CONCERNING NEW ACQUISITION PROGRAMS

Section 825 of Pub. L. 100–180 provided that: ''It is the sense of Congress that the Secretary of Defense should not, before an acquisition program is approved to proceed into full-scale development, prepare any material, report, list, or analysis with respect to economic benefits or the employment impact of that program in a particular State or congressional district.''

DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

Section 1243 of Pub. L. 98–525, as amended by Pub. L. 100–26, § 11(a)(1), Apr. 21, 1987, 101 Stat. 288, which related to waivable minimum four-year tour of duty of program managers for major defense acquisition programs, was repealed and restated in section 2435(c) of this title by Pub. L. 100–370, § 1(i), July 19, 1988, 102 Stat. 848.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1734, 2400, 2403, 2433 of this title.

§ 2433. Unit cost reports

(a) In this section:

(1) The terms ''program acquisition unit cost'', ''procurement unit cost'', and ''major contract'' have the same meanings as provided in section 2432(a) of this title.

(2) The term ''Baseline Estimate'', with respect to a unit cost report that is submitted under this section to the service acquisition executive designated by the Secretary concerned on a major defense acquisition program, means the cost estimate included in the baseline description for the program under section 2435 of this title.

(3) The term ''procurement program'' means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(b) The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit costs of the program. Each report shall be submitted not more than 30 calendar days after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

(1) The program acquisition unit cost.

(2) In the case of a procurement program, the procurement unit cost.

(3) Any cost variance or schedule variance in a major contract under the program since the contract was entered into.

(4) Any changes from program schedule milestones or program performances reflected in the baseline description established under section 2435 of this title that are known, expected, or anticipated by the program manager.

(c) If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe—

(1) that the program acquisition unit cost for the program has increased by at least 15 percent over the program acquisition unit cost for the program as shown in the Baseline Estimate;

(2) in the case of a major defense acquisition program that is a procurement program, that the procurement unit cost for the program has increased by at least 15 percent over the procurement unit cost for the program as reflected in the Baseline Estimate; or

(3) that cost variances or schedule variances of a major contract under the program have resulted in an increase in the cost of the contract of at least 15 percent over the cost of the contract as of the time the contract was made;

and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned during the current fiscal year (other than the last

quarterly unit cost report under subsection (b) for the preceding fiscal year), then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under subsection (b).

(2) If in any fiscal year the program manager for a major defense acquisition program has submitted to the service acquisition executive designated by the Secretary concerned a unit cost report (other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year) indicating an increase of 15 percent or more in a category described in clauses (A) through (C) of paragraph (1) and subsequently determines that there is reasonable cause to believe—

(A) that the current program acquisition unit cost of the program has increased by at least 5 percent over the current program acquisition unit cost as shown in the most recent report under this subsection or subsection (b) submitted to such service acquisition executive with respect to that program;

(B) in the case of a major defense acquisition program that is a procurement program, that the current procurement unit cost for the program has increased by at least 5 percent over the current procurement unit cost as shown in the most recent report under this subsection or subsection (b) submitted to such service acquisition executive with respect to that program; or

(C) that cost variances or schedule variances of a major contract under the program have resulted in an increase in the cost of the contract of at least 5 percent over the cost of the contract as shown in the most recent report under this subsection or subsection (b) submitted to such service acquisition executive with respect to that program;

the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required by subsection (b).

(d)(1) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program has increased by at least 15 percent, or by at least 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Estimate.

(2) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program that is a procurement program, the service acquisition executive, in addition to the determination under paragraph (1), shall determine whether the procurement unit cost for the program has increased by at least 15 percent, or by at least 25 percent, over the procurement unit cost for the program as reflected in the Baseline Estimate.

(3) If, based upon the service acquisition executive's determination, the Secretary concerned determines (for the first time since the beginning of the current fiscal year) that the current program acquisition unit cost has increased by at least 15 percent, or by at least 25 percent, as determined under paragraph (1) or that the procurement unit cost has increased by at least 15 percent, or by at least 25 percent, as determined under paragraph (2), the Secretary shall notify Congress in writing of such determination and of the increase with respect to such program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.

(e)(1)(A) Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program has increased by at least 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 2432(e) of this title and shall be submitted in accordance with section 2432(f) of this title.

(B) Whenever the Secretary makes a determination referred to in subparagraph (A) in the case of a major defense acquisition program during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report under subparagraph (A) but shall include the information described in subsection (g) regarding that program in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(2) If the percentage increase in the program acquisition unit cost or procurement unit cost of a major defense acquisition program (as determined by the Secretary under subsection (d)) exceeds 25 percent, the Secretary of Defense shall submit to Congress, before the end of the 30-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title—

(A) a written certification, stating that—

(i) such acquisition program is essential to the national security;

(ii) there are no alternatives to such acquisition program which will provide equal or greater military capability at less cost;

(iii) the new estimates of the program acquisition unit cost or procurement unit cost are reasonable; and

(iv) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost; and

(B) if a report under paragraph (1) has been previously submitted to Congress with respect to such program for the current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.

(3) If a determination of an increase of at least 15 percent is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of an increase of at least 25 percent is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program. The prohibition on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under paragraph (1) or (2)(B) with respect to that program, in the case of a determination of an increase of at least 15 percent (as determined in subsection (d)); or

(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) or (2)(B) and the certification of the Secretary of Defense under paragraph (2)(A) with respect to that program, in the case of an increase of at least 25 percent (as determined under subsection (d)).

(f) Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars (as described in section 2430 of this title).

(g)(1) Except as provided in paragraph (2), each report under subsection (e) with respect to a major defense acquisition program shall include the following:

(A) The name of the major defense acquisition program.

(B) The date of the preparation of the report.

(C) The program phase as of the date of the preparation of the report.

(D) The estimate of the program acquisition cost for the program as shown in the Selected Acquisition Report in which the program was first included, expressed in constant base-year dollars and in current dollars.

(E) The current program acquisition cost in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost.

(G) The completion status of the program (i) expressed as the percentage that the number of years for which funds have been appropriated for the program is of the number of years for which it is planned that funds will be appropriated for the program, and (ii) expressed as the percentage that the amount of funds that have been appropriated for the program is of the total amount of funds which it is planned will be appropriated for the program.

(H) The fiscal year in which information on the program was first included in a Selected Acquisition Report (referred to in this paragraph as the ''base year'') and the date of that Selected Acquisition Report in which information on the program was first included.

(I) The type of the Baseline Estimate that was included in the baseline description under section 2435 of this title and the date of the Baseline Estimate.

(J) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost, stated both in constant base-year dollars and in current dollars.

(K) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost, stated both in constant base-year dollars and in current dollars and the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(L) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(M) The identities of the military and civilian officers responsible for program management and cost control of the program.

(N) The action taken and proposed to be taken to control future cost growth of the program.

(O) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost.

(P) The following contract performance assessment information with respect to each major contract under the program:

(i) The name of the contractor.

(ii) The phase that the contract is in at the time of the preparation of the report.

(iii) The percentage of work under the contract that has been completed.

(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(v) The percentage by which the contract is currently ahead of or behind schedule.

(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule variances under major contracts of the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program that results in a report under this subsection is due to termination or cancellation of the entire program, only the information specified in clauses (A) through (F) of paragraph (1) and the percentage change in

program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report. The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.

(h) Reporting under this section shall not apply if a program has received a limited reporting waiver under section 2432(h) of this title.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 741, § 139b; amended Pub. L. 98–94, title XII, § 1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98–525, title XII, § 1242(b), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 99–145, title XIII, § 1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered § 2433 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(14), (g)(8), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, § 101(c) [title X, § 961(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(b), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, § 811(a), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 101–510, div. A, title XIV, § 1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title VIII, § 817(d), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103–35, title II, § 201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title III, §§ 3002(a)(2), 3003, Oct. 13, 1994, 108 Stat. 3328, 3329.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–355, § 3003(a)(1)(A), substituted ''Baseline Estimate'' for ''Baseline Selected Acquisition Report'' and ''cost estimate included in the baseline description for the program under section 2435 of this title.'' for ''Selected Acquisition Report in which information on the program is first included or the comprehensive annual Selected Acquisition Report for the fiscal year immediately before the fiscal year containing the quarter with respect to which the unit cost report is submitted, whichever is later.''

Subsec. (a)(4). Pub. L. 103–355, § 3003(a)(1)(B), struck out par. (4) which defined ''Baseline Report''.

Subsec. (b)(3). Pub. L. 103–355, § 3003(b), substituted ''contract was entered into'' for ''Baseline Report was submitted''.

Subsec. (c). Pub. L. 103–355, §§ 3002(a)(2)(A), 3003(a)(2)(A), (c), struck out par. (1) designation and par. (2), redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, substituted ''Baseline Estimate'' for ''Baseline Report'' in pars. (1) and (2), and struck out ''current'' before ''procurement unit cost'' in par. (2). Prior to amendment, former par. (2) related to submission of unit cost reports by major defense acquisition program manager to service acquisition executive designated by Secretary of Defense in certain circumstances.

Subsec. (d)(1). Pub. L. 103–355, § 3003(a)(2)(B), substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(2). Pub. L. 103–355, §§ 3002(a)(2)(B), 3003(a)(2)(B), struck out ''current'' before ''procurement unit cost'' and substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(3). Pub. L. 103–355, § 3002(a)(2)(B), struck out ''current'' before ''procurement unit cost''.

Subsec. (e)(1)(A), (2). Pub. L. 103–355, § 3002(a)(2)(C), struck out ''current'' before ''procurement unit cost''.

Subsec. (f). Pub. L. 103–355, § 3003(d), substituted ''be stated in terms of constant base year dollars (as described in section 2430 of this title)'' for ''include expected inflation''.

Subsec. (g)(1)(I). Pub. L. 103–355, § 3003(e), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report.''

1993—Subsec. (e)(3). Pub. L. 103–35 substituted ''an increase of at least 15 percent'' for ''a at least 15 percent increase'' in introductory provisions and in subpar. (A), and substituted ''an increase of at least 25 percent'' for ''a at least 25 percent increase'' in introductory provisions and in subpar. (B).

1992—Subsec. (a)(4)(C). Pub. L. 102–484, § 817(d)(1), substituted ''(e)(2)(B)'' for ''(e)(2)(B)(ii)''.

Subsec. (b). Pub. L. 102–484, § 817(d)(2), substituted ''30 calendar days'' for ''7 days (excluding Saturdays, Sundays, and legal public holidays)'' in second sentence.

Subsec. (c)(1)(A), (B), (2)(A), (B). Pub. L. 102–484, § 817(d)(3), substituted ''at least'' for ''more than''.

Subsec. (d)(1), (2). Pub. L. 102–484, § 817(d)(4)(A), substituted ''at least'' for ''more than'' wherever appearing.

Subsec. (d)(3). Pub. L. 102–484, § 817(d)(4)(B), substituted ''at least'' for ''more than'' wherever appearing and ''program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.'' for ''program within 30 days after the date on which the service acquisition executive reports his determination of such increase in such unit cost to the Secretary and shall include in such notification the date on which the determination was made.''

Subsec. (e)(1)(A). Pub. L. 102–484, § 817(d)(5)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the current program acquisition cost of a major defense acquisition program has increased by more than 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination and such report shall include the information described in section 2432(e) of this title. The report shall be submitted within 45 days after the end of that quarter.''

Subsec. (e)(2). Pub. L. 102–484, § 817(d)(5)(B), substituted ''program acquisition unit cost or current procurement unit cost'' for ''current program acquisition cost''.

Subsec. (e)(3). Pub. L. 102–484, § 817(d)(5)(C), substituted ''at least'' for ''more than'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510 struck out ''the'' before ''such service acquisition executive'' wherever appearing.

1989—Subsec. (a)(2). Pub. L. 101–189, § 811(a)(1)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned''.

Subsec. (a)(4). Pub. L. 101–189, § 811(a)(1)(B)(i), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 101–189, § 811(a)(1)(B)(ii), substituted ''Selected Acquisition Report submitted under subsection (e)(2)(B) that includes information on'' for ''unit cost report submitted under subsection (e)(2)(B)(ii) with respect to''.

Subsec. (a)(4)(B). Pub. L. 101–189, § 811(a)(1)(B)(iii), substituted ''subsection (e)(2)(B) with respect to the program during that three-quarter period, the most recent Selected Acquisition Report submitted under sub-

section (e)(1) that includes information on the program'' for ''subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program''.

Subsec. (b). Pub. L. 101–189, § 811(a)(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The program manager for a defense acquisition program that as of the end of a fiscal-year quarter is a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, after the end of that quarter, submit to the Secretary concerned a written report on the unit costs of the program. Each report for the first quarter of a fiscal year shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):''.

Subsec. (b)(4). Pub. L. 101–189, § 811(a)(2)(B), substituted ''description established under section 2435 of this title'' for ''Selected Acquisition Report''.

Subsec. (c)(1). Pub. L. 101–189, § 811(a)(3)(A), in introductory provisions, struck out ''fiscal-year'' after ''time during a'', and in concluding provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned during'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'' and ''such service acquisition executive a unit'' for ''Secretary concerned a unit''.

Subsec. (c)(2). Pub. L. 101–189, § 811(a)(3)(B), in introductory provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned a unit'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'', and in cls. (A), (B), and (C), and concluding provisions, substituted ''such service acquisition executive'' for ''Secretary concerned''.

Subsec. (d)(1). Pub. L. 101–189, § 811(a)(4)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' and substituted ''service acquisition executive shall determine'' for ''Secretary shall determine''.

Subsec. (d)(2). Pub. L. 101–189, § 811(a)(4)(B), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned under'' and substituted ''service acquisition executive, in addition to the determination under paragraph (1), shall determine'' for ''Secretary concerned shall, in addition to the determination under paragraph (1), determine''.

Subsec. (d)(3). Pub. L. 101–189, § 811(a)(4)(C), substituted par. (3) consisting of a single par., for former par. (3) consisting of subpars. (A) and (B).

Subsec. (e)(1), (2). Pub. L. 101–189, § 811(a)(5)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which contained exceptions to the prohibitions in subsec. (d)(3)(B)(i) and (ii).

Subsec. (e)(3). Pub. L. 101–189, § 811(a)(5)(B), in introductory provisions, inserted ''If a determination of a more than 15 percent increase is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of a more than 25 percent increase is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.'' and struck out ''in subsection (d)(3)(B)'' after ''prohibition'', in subpar. (A), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'' and ''(2)(B)'' for ''(2)(B)(ii)'', and in subpar. (B), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'', ''(2)(B)'' for ''(2)(B)(ii)'', and ''(2)(A)'' for ''(2)(B)(i)''.

Subsec. (g)(2). Pub. L. 101–189, § 811(a)(6), inserted at end ''The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.''

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 100–26, § 7(b)(4), substituted ''(1) The terms 'program' '' for ''(1) 'Major defense acquisition program', 'program' ''.

Subsec. (a)(2). Pub. L. 100–26, § 7(k)(7)(A), inserted ''The term'' after par. designation.

Subsec. (a)(3). Pub. L. 100–26, § 7(k)(7)(B), substituted ''The term 'procurement' '' for '' 'Procurement' ''.

Subsec. (a)(4). Pub. L. 100–26, § 7(k)(7)(A), inserted ''The term'' after par. designation.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139b of this title as this section.

Pub. L. 99–433, § 110(d)(14), substituted ''Unit cost reports'' for ''Oversight of cost growth of major programs: unit cost reports'' in section catchline.

Subsec. (a)(1). Pub. L. 99–433, § 110(g)(8)(A), substituted ''section 2432(a)'' for ''section 139a(a)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(b)(1)], Pub. L. 99–661, § 961(b)(1), amended subsec. (b) identically, inserting ''(excluding Saturdays, Sundays, and legal public holidays)'' in two places in second sentence.

Pub. L. 99–433, § 110(g)(8)(B), substituted ''section 2432(b)(3)'' for ''section 139a(b)(3)'' in first sentence.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 961(b)(2)], Pub. L. 99–661, § 961(b)(2), amended section identically, adding subsec. (h).

1985—Subsec. (d)(3)(B)(i). Pub. L. 99–145 inserted ''percent'' after ''15''.

1984—Subsec. (a)(4). Pub. L. 98–525, § 1242(b)(1), added par. (4).

Subsec. (b). Pub. L. 98–525, § 1242(b)(2)(A), (B), struck out ''not more than 7 days'' before ''after the end of that quarter'' and inserted ''Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter.''

Subsec. (b)(3). Pub. L. 98–525, § 1242(b)(2)(C), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (c)(1)(A), (B). Pub. L. 98–525, § 1242(b)(3), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(1), (2). Pub. L. 98–525, § 1242(b)(4)(A), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(3)(B). Pub. L. 98–525, § 1242(b)(4)(B)(i), substituted ''funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program'' for ''additional funds may not be obligated in connection with such program''.

Subsec. (d)(3)(B)(i). Pub. L. 98–525, § 1242(b)(4)(B)(ii), struck out ''but less than 25 percent'' after ''more than 15''.

Subsec. (e)(1). Pub. L. 98–525, § 1242(b)(5)(A), substituted ''subsection (d)(3)(B)(i)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''15 percent''.

Subsec. (e)(2). Pub. L. 98–525, § 1242(b)(5)(B), substituted ''subsection (d)(3)(B)(ii)'' for ''subsection

(d)(3)(B)'' and inserted ''more than'' before ''25 percent''.

Subsec. (e)(2)(A). Pub. L. 98–525, §1242(b)(5)(B)(iii), inserted ''and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)''.

Subsec. (e)(2)(B). Pub. L. 98–525, §1242(b)(5)(B)(iv), substituted ''subsection (d)(3)(B)(ii)'' for ''such subsection''.

Subsec. (e)(3). Pub. L. 98–525, §1242(b)(5)(C), substituted ''at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

''(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

''(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).'',

for ''in the case of a program to which it would otherwise apply if, after such prohibition has taken effect, the Committees on Armed Services of the Senate and House of Representatives waive the prohibition with respect to such program.''

Subsec. (g)(1)(I). Pub. L. 98–525, §1242(b)(6)(A), substituted ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report'' for ''The date of the baseline Selected Acquisition Report''.

Subsec. (g)(1)(K). Pub. L. 98–525, §1242(b)(6)(B), required the report to include the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

1983—Subsec. (g)(2). Pub. L. 98–94 substituted ''procurement'' for ''procurment''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 effective Jan. 1, 1987, see section 101(c) [§961(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 961(c) of Pub. L. 99–661, set out as a note under section 2432 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1983, and applicable beginning with respect to reports for first quarter of fiscal year 1983, see section 1107(c) of Pub. L. 97–252, set out as a note under section 2432 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2435 of this title.

§2434. Independent cost estimates; operational manpower requirements

(a) REQUIREMENT FOR APPROVAL.—The Secretary of Defense may not approve the engineering and manufacturing development, or the production and deployment, of a major defense acquisition program unless an independent estimate of the full life-cycle cost of the program and a manpower estimate for the program have been considered by the Secretary.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

(1) that the independent estimate of the full life-cycle cost of a program—

(A) be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and

(B) include all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control; and

(2) that the manpower estimate include an estimate of the total number of personnel required—

(A) to operate, maintain, and support the program upon full operational deployment; and

(B) to train personnel to carry out the activities referred to in subparagraph (A).

(Added Pub. L. 98–94, title XII, §1203(a)(1), Sept. 24, 1983, 97 Stat. 682, §139c; renumbered §2434 and amended Pub. L. 99–433, title I, §§101(a)(5), 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–661, div. A, title XII, §1208(a)–(c)(1), Nov. 14, 1986, 100 Stat. 3975; Pub. L. 100–26, §7(b)(5), Apr. 21, 1987, 101 Stat. 279; Pub. L. 100–180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title V, §525, Sept. 29, 1988, 102 Stat. 1975; Pub. L. 102–190, div. A, title VIII, §801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 103–355, title III, §3004, Oct. 13, 1994, 108 Stat. 3330.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355, §3004(b), substituted ''engineering and manufacturing development'' for ''full-scale engineering development'' and ''full life-cycle cost of the program and a manpower estimate for the program have'' for ''cost of the program, together with a manpower estimate, has''.

Subsec. (b). Pub. L. 103–355, §3004(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) defined ''independent estimate'', ''cost of the program'', and ''manpower estimate''.

1991—Subsec. (a). Pub. L. 102–190, §801(a), substituted ''unless an independent estimate of the cost of the program, together with a manpower estimate, has been considered by the Secretary.'' for ''unless—

''(1) an independent estimate of the cost of the program is first submitted to (and considered by) the Secretary; and

''(2) the Secretary submits a manpower estimate of the program to the Committees on Armed Services of the Senate and the House of Representatives at least 30 days in advance of such approval.''

Subsecs. (b), (c). Pub. L. 102–190, §801(b)(1), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

''(b) EXCEPTIONS.—(1) Subsection (a)(2) shall not apply during time of war or during a national emergency declared by Congress or the President.

''(2) The 30-day period specified in subsection (a)(2) shall be reduced to 10 days in the case of a major defense acquisition program if the manpower estimate submitted by the Secretary of Defense under subsection (a)(2) with respect to that program indicates that no increase in military or civilian personnel end strengths described in subsection (c)(3)(B) will be required.''

1988—Subsec. (a)(2). Pub. L. 100–456, §525(1), substituted ''30 days'' for ''90 days''.

Subsec. (b). Pub. L. 100–456, § 525(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 100–456, § 525(2), redesignated subsec. (b) as (c), and in par. (3)(A), substituted ''in total personnel or in'' for ''both in total personnel and''.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

Subsec. (b). Pub. L. 100–26 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139c of this title as this section.

Pub. L. 99–661, § 1208(c)(1), substituted ''Independent cost estimates; operational manpower requirements'' for ''Independent cost estimates'' in section catchline.

Pub. L. 99–433, § 110(d)(15), substituted ''Independent cost estimates'' for ''Major defense acquisition programs: independent cost estimates'' in section catchline.

Subsec. (a). Pub. L. 99–661, § 1208(a), inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 99–661, § 1208(b)(1), inserted heading.

Subsec. (b)(1). Pub. L. 99–661, § 1208(b)(2), substituted ''The term 'Major'' for '' 'Major''.

Pub. L. 99–433, § 110(g)(9), substituted ''section 2432(a)(1)'' for ''section 139a(a)(1)''.

Subsec. (b)(2). Pub. L. 99–661, § 1208(b)(3), substituted ''The term 'independent'' for '' 'Independent''.

Subsec. (b)(3). Pub. L. 99–661, § 1208(b)(4), substituted ''The term 'cost'' for '' 'Cost''.

Subsec. (b)(4). Pub. L. 99–661, § 1208(b)(5), added par. (4).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1208(d) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply to approvals of full-scale engineering development and to approvals of production and deployment of major defense acquisition programs made after December 31, 1986.''

EFFECTIVE DATE

Section 1203(b) of Pub. L. 98–94 provided that: ''Section 139c [now 2434] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

REPORT TO CONGRESS ON USE OF INDEPENDENT COST ESTIMATES IN PLANNING, PROGRAMING, BUDGETING, AND SELECTION FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 99–145, title IX, § 952, Nov. 8, 1985, 99 Stat. 701, directed Secretary of Defense, not later than Apr. 1, 1986, to submit to Congress a report on the continued use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs of the Department.

Section 1203(c) of Pub. L. 98–94 directed Secretary of Defense, not later than May 1, 1984, to submit a written report to Congress on use of independent cost estimates in planning, programing, budgeting, and selection process for major defense acquisition programs in Department, such report to include an overall assessment of extent to which such estimates were adopted by Department in making decisions on the FY 1985 budget and a general explanation of why such estimates might have been modified or rejected, and a discussion of current and future initiatives to make greater or more productive use of independent cost estimates in the Department.

ALLOCATION OF ADEQUATE PERSONNEL AND FINANCIAL RESOURCES IN DEVELOPING OR ASSESSING INDEPENDENT ESTIMATES OF COSTS

Section 1203(d) of Pub. L. 98–94 provided that: ''It is the sense of the Congress that the Secretary of Defense should ensure that adequate personnel and financial resources are allocated at all levels of the Department of Defense to those organizations or offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs.''

§ 2435. Baseline description

(a) BASELINE DESCRIPTION REQUIREMENT.—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to as the ''Baseline Estimate'' in section 2433 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program.

(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program may be obligated after the program enters engineering and manufacturing development without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition and Technology.

(c) SCHEDULE.—A baseline description for a major defense acquisition program shall be prepared under this section—

(1) before the program enters demonstration and validation;

(2) before the program enters engineering and manufacturing development; and

(3) before the program enters production and deployment.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

(1) The content of baseline descriptions under this section.

(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition and Technology by the program manager for a program for which there is an approved baseline description under this section of reports of deviations from the baseline of the cost, schedule, performance, supportability, or any other factor of the program.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99–500, § 101(c) [title X, § 904(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, § 101(c) [title X, § 904(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133; Pub. L. 99–661, div. A, title IX, formerly title IV, § 904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(6), Apr. 21, 1987, 101 Stat.

280; Pub. L. 100–180, div. A, title VIII, § 803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–370, § 1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100–456, div. A, title XII, § 1233(*l*)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, § 811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XII, § 1207(b), title XIV, § 1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title III, § 3005(a), Oct. 13, 1994, 108 Stat. 3330.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (c) is based on Pub. L. 98–525, title XII, § 1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100–26, § 110(a)(1), Apr. 21, 1987, 101 Stat. 288.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section related to enhanced program stability.

1993—Subsec. (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (b)(1). Pub. L. 101–510, § 1484(k)(11), struck out closing parenthesis after ''such Secretary'' in introductory provisions.

Subsec. (c). Pub. L. 101–510, § 1207(b), struck out subsec. (c) which read as follows: ''STABILITY OF PROGRAM MANAGERS.—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

''(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated.''

1989—Subsec. (a)(2)(B)(iv). Pub. L. 101–189, § 811(b)(1), substituted ''production'' for ''development''.

Subsec. (b)(1). Pub. L. 101–189, § 811(b)(2)(A), substituted ''service acquisition executive designated by such Secretary'' for ''senior procurement executive of such military department (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

Subsec. (b)(2). Pub. L. 101–189, § 811(b)(2)(B), substituted ''180 days'' for ''90 days'' in introductory provisions.

1988—Subsec. (b)(2). Pub. L. 100–456 clarified amendment by Pub. L. 100–180, § 803(a). See 1987 Amendment note below.

Subsec. (c). Pub. L. 100–370 added subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–180, as amended by Pub. L. 100–456, substituted ''under paragraph (1), and for which the total cost of completion of the stage will exceed by 15 percent or more, in the case of a development stage, or by 5 percent or more, in the case of a production stage, the amount specified in the baseline description established under subsection (a) for such stage; or any milestone specified in such baseline description will be missed by more than 90 days'' for first reference to ''under paragraph (1)''.

Subsec. (c). Pub. L. 100–26, § 7(b)(6), struck out subsec. (c) which defined ''major defense acquisition program''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1207(b) of Pub. L. 101–510 provided that the amendment made by that section is effective Oct. 1, 1991.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable as if included in the enactment of Pub. L. 100–180, see section 1233(*l*)(5) of Pub. L. 100–456 set out as a note under section 2366 of this title.

EFFECTIVE DATE

Section 101(c) [title IX, § 904(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 904(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2435 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major defense acquisition programs that enter full-scale engineering development or full-rate production after the date of the enactment of this Act [Oct. 18, 1986].''

REVIEW OF ACQUISITION PROGRAM CYCLE

Section 5002(a) of Pub. L. 103–355 provided that: ''The Secretary of Defense shall review the regulations of the Department of Defense to ensure that acquisition program cycle procedures are focused on achieving the goals that are consistent with the program baseline description established pursuant to section 2435 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1734, 2433 of this title.

[§§ 2436, 2437. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(5), Nov. 30, 1993, 107 Stat. 1704]

Section 2436, added Pub. L. 99–500, § 101(c) [title X, § 905(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, and Pub. L. 99–591, § 101(c) [title X, § 905(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134; Pub. L. 99–661, div. A, title IX, formerly title IV, § 905(a)(1), Nov. 14, 1986, 100 Stat. 3914; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(7), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(c), title XII, § 1231(14), Dec. 4, 1987, 101 Stat. 1125, 1160; Pub. L. 101–510, div. A, title XIV, § 1484(h)(4), Nov. 5, 1990, 104 Stat. 1718, related to establishment and conduct of the defense enterprise program.

Section 2437, added Pub. L. 99–500, § 101(c) [title X, § 906(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–135, and Pub. L. 99–591, § 101(c) [title X, § 906(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–135; Pub. L. 99–661, div. A, title IX, formerly title IV, § 906(a)(1), Nov. 14, 1986, 100 Stat. 3915; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(8), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–224, § 5(a)(3), Dec. 30, 1987, 101 Stat. 1538, related to designation of defense enterprise programs for milestone authorization.

[§§ 2438, 2439. Repealed. Pub. L. 103–355, title III, §§ 3006(a), 3007(a), Oct. 13, 1994, 108 Stat. 3331]

Section 2438, added Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(B), Oct. 23, 1992, 106 Stat. 2459; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, required competitive prototyping of major weapon systems and subsystems prior to development under major defense acquisition program.

Provisions similar to those in section 2438 were contained in section 2365 of this title, prior to repeal by Pub. L. 102–484, § 821(c)(1).

A prior section 2438 was renumbered section 2439 of this title.

Section 2439, added Pub. L. 99–145, title IX, § 912(a)(1), Nov. 8, 1985, 99 Stat. 685, § 2305a; amended Pub. L. 99–433, title I, § 110(g)(3), Oct. 1, 1986, 100 Stat. 1004; renumbered § 2438 and amended Pub. L. 100–26, § 7(b)(9)(A), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–510, div. A,

title VIII, § 805, Nov. 5, 1990, 104 Stat. 1591; renumbered § 2439, Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(A), Oct. 23, 1992, 106 Stat. 2459, directed Secretary of Defense, before full-scale development under major program began, to prepare acquisition strategy which ensured that contracts for each major program, including each major subsystem under program, were awarded in accordance with acquisition strategy, and granted Secretary option of using competitive alternative sources for major programs and major subsystems throughout period.

§ 2440. Technology and Industrial Base Plans

The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base in the development and implementation of acquisition plans for each major defense acquisition program.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(b)(1), Oct. 23, 1992, 106 Stat. 2669.)

CHAPTER 145—CATALOGING AND STANDARDIZATION

Sec.
2451. Defense supply management.
2452. Duties of Secretary of Defense.
2453. Supply catalog: distribution and use.
2454. Supply catalog: new or obsolete items.
[2455. Repealed.]
2456. Coordination with General Services Administration.
2457. Standardization of equipment with North Atlantic Treaty Organization members.
2458. Inventory management policies.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title III, § 323(a)(2), title XIII, § 1331(6), Nov. 5, 1990, 104 Stat. 1530, 1673, struck out item 2455 ''Reports to Congress'' and added item 2458.

1982—Pub. L. 97–295, § 1(30)(B), Oct. 12, 1982, 96 Stat. 1296, added item 2457.

CROSS REFERENCES

Procurement generally, see section 2301 et seq. of this title.

Property records, basis and reports, see section 2721 of this title.

§ 2451. Defense supply management

(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

(2) standardize the methods of packing, packaging, and preserving such items; and

(3) make efficient use of the services and facilities for inspecting, testing, and accepting such items.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(13), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2451(a)	5:173.	July 1, 1952, ch. 539, §§ 2, 4, 66 Stat. 318, 319; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2451(b)	5:173b(a).	
2451(c)	5:173b(b).	

In subsection (a), the words ''for the Department of Defense'' are inserted for clarity. 5:173 (1st sentence) is omitted as impliedly repealed by section 2 of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638.

In subsection (b), the words ''or any of the departments thereof'', ''in such manner'', ''original'', and ''necessary or'' are omitted as surplusage. The words ''throughout the Department of Defense'' are substituted for the words ''either within a bureau or service, between bureaus or services, or between the departments''. The word ''recurrently'' is substituted for the word ''repetitively''. The words ''Only one identification may'' are substituted for the words ''The single item identification shall''.

In subsection (c), the words ''the most'' are omitted as surplusage. The words ''to the highest degree practicable'' are substituted for the words ''achieve the highest practicable degree possible'' and ''The greatest practicable degree of standardization * * * shall be achieved''.

1958 ACT

The change makes clear that clauses (2) and (3) apply to all items, whether or not standardized, used throughout the Department of Defense.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–861 substituted ''such'' for ''standardized'' in cl. (2), and ''such'' for ''those'' in cl. (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

STANDARDIZATION AND INTEROPERABILITY OF NATO WEAPONS

Pub. L. 94–361, title VIII, § 803, July 14, 1976, 90 Stat. 930, which expressed the sense of Congress that the weapons systems of the NATO Allies be standardized and interoperable, that this goal would be facilitated by inter-allied procurement of arms and closer intra-European collaboration in arms procurement, and directed the Secretary of Defense to negotiate with the Allies toward these ends and to report to Congress on actions and programs undertaken to achieve them, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 94–106, title VIII, § 814(a), (b), Oct. 7, 1975, 89 Stat. 540, as amended Pub. L. 94–361, title VIII, § 802, July 14, 1976, 90 Stat. 930, which had provided that it was the policy of the United States that the equipment of our armed forces in Europe be standardized or at least interoperable with that of our NATO Allies, directed the Secretary of Defense to carry out procurement policies toward this end and to report to Congress on any agreements with the Allies involving exchange of equipment manufactured in the United States for equipment manufactured outside it, authorized the Secretary to find such agreements contrary to the public interest and required him to report on the procurement of any major weapons system not in accord with these policies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 93–365, title III, § 302(c), Aug. 5, 1974, 88 Stat. 402, as amended Pub. L. 94–106, title VIII, § 814(c), Oct. 7, 1975, 89 Stat. 540; Pub. L. 97–252, title XI, § 1121, Sept. 8, 1982, 96 Stat. 754, which had directed the Secretary of Defense to assess the costs and possible loss of effectiveness from the failure of the NATO Allies to standardize equipment, to suggest standardization actions, and to report these matters to the Allies and Congress and to Congress annually on them and results obtained with the Allies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2452, 2453, 2454 of this title.

§ 2452. Duties of Secretary of Defense

The Secretary of Defense shall—

(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

(2) direct and coordinate progressive use of the supply catalog in all supply functions within the Department of Defense from the determination of requirements through final disposal;

(3) direct, review, and approve—

(A) the naming, description, and pattern of description of all items;

(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

(C) the publication and distribution of the supply catalog;

(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products, and resolve differences between the military departments, bureaus, and services with respect to them;

(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

(7) establish time schedules for assignments made under clause (6); and

(8) make final decisions in all matters concerned with the cataloging and standardization programs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2452	5:173c.	July 1, 1952, ch. 539, § 5, 66 Stat. 319; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

In clause (1), the word ''establish'' is omitted as surplusage.

In clause (2), the words ''provided for herein'' and ''its departments, bureaus, and services'' are omitted as surplusage.

In clauses (2) and (3), the words ''provide for'' are omitted as surplusage.

In clause (4), the words ''establish and'' and ''established by sections 173–173i of this title'' are omitted as surplusage.

In clause (5), the words ''amend'' and ''promulgate'' are omitted as surplusage.

In clause (6), the words ''established by sections 173–173i of this title'' are omitted as surplusage.

Clause (7) is substituted for 5:173c(f) (last 11 words).

In clause (8), the word ''programs'' is substituted for the words ''authority established in sections 173–173i of this title''. The words ''subject to review and modification by the Secretary of Defense'' are omitted as surplusage.

REGULATIONS RELATING TO INCREASES IN PRICES FOR SPARE PARTS AND REPLACEMENT EQUIPMENT

Pub. L. 98–94, title XII, § 1215, Sept. 24, 1983, 97 Stat. 688, as amended by Pub. L. 98–525, title XII, § 1244, Oct. 19, 1984, 98 Stat. 2609; Pub. L. 103–35, title II, § 204(b), May 31, 1993, 107 Stat. 102, provided that:

''(a) Not later than 120 days after the date of the enactment of this Act [Sept. 24, 1983], the Secretary of Defense shall issue regulations which—

''(1) except as provided in clause (2), prohibit the purchase of any spare part or replacement equipment when the price of such part or equipment, since a time in the past specified by the Secretary (in terms of days or months) or since the most recent purchase of such part or equipment by the Department of Defense, has increased in price by a percentage in excess of a percentage threshold specified by the Secretary in such regulations, and

''(2) permit the purchase of such spare part or equipment (notwithstanding the prohibition contained in clause (1)) if the contracting officer for such part or equipment certifies in writing to the head of the procuring activity before the purchase is made that—

''(A) such officer has evaluated the price of such part or equipment and concluded that the increase in the price of such part or equipment is fair and reasonable, or

''(B) the national security interests of the United States require that such part or equipment be purchased despite the increase in price of such part or equipment.

''(b)(1) The Secretary shall publish the regulations issued under this section in the Federal Register.

''(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.

''(c) Not less than 30 days before the Secretary publishes such regulations in accordance with subsection

(b), the Secretary shall submit the text of the proposed regulations to the Committees on Armed Services of the Senate and House of Representatives.''

REPORT ON MANAGEMENT OF ACQUISITION OF SPARE PARTS

Pub. L. 98–94, title XII, § 1216, Sept. 24, 1983, 97 Stat. 688, directed Secretary of Defense to submit to Congress, by June 1, 1984, a comprehensive report on management by Department of Defense of acquisition of initial and replenishment spare parts and on status of efforts within Department (including particularly the Defense Logistics Agency and the military departments) to correct problems associated with increased costs of such parts, directed Secretary, not later than Dec. 1, 1983, to submit to Congress an interim report stating briefly the actions being taken by the Department to improve acquisition and management of spare parts, and directed Secretary to put into effect at the earliest practicable date policies and procedures to achieve a long-term solution to problems relating to excessive costs of, and long lead times in the acquisition of, initial and replenishment spare parts.

§ 2453. Supply catalog: distribution and use

The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2453	5:173d.	July 1, 1952, ch. 539, § 6, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

The words ''and ready for use'' and ''all departments, bureaus, and services'' are omitted as surplusage. The words ''After replacement'' are substituted for the word ''Thereafter''. The words ''with respect to the kinds of items covered by that part'' are inserted for clarity.

§ 2454. Supply catalog: new or obsolete items

(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

(b) Obsolete items may be deleted from the catalog at any time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2454(a)	5:173e (less last 5 words of 1st proviso).	July 1, 1952, ch. 539, § 7, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2454(b).	5:173e (last 5 words of 1st proviso).	

In subsection (a), the words ''After any part * * * is distributed'' are substituted for the words ''Following the publication and promulgation * * * or portions thereof''. The words ''and with respect to the kinds of items covered by that part'' are inserted for clarity. The word ''recurrent'' is substituted for the word ''repetitive''. The words ''the departments, bureaus, and services of'' are omitted as surplusage. The second sentence of the revised subsection is substituted for 5:173e (1st proviso, less last 5 words; and 2d proviso).

In subsection (b), the words ''at any time'' are inserted for clarity.

[§ 2455. Repealed. Pub. L. 101–510, div. A, title XIII, § 1322(a)(9), Nov. 5, 1990, 104 Stat. 1671]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 140; Jan. 2, 1975, Pub. L. 93–608, § 2(2), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97–375, title II, § 203(c), 96 Stat. 1823, related to reports on cataloging supplies for Department of Defense.

§ 2456. Coordination with General Services Administration

To avoid unnecessary duplication, the Administrator of General Services and the Secretary of Defense shall coordinate the cataloging and standardization activities of the General Services Administration and the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2456	5:173i.	July 1, 1952, ch. 539, § 11, 66 Stat. 320.

CROSS REFERENCES

Cataloging and standardization activities, coordination of Administrator of General Services with Secretary of Defense, see section 487 of Title 40, Public Buildings, Property, and Works.

§ 2457. Standardization of equipment with North Atlantic Treaty Organization members

(a) It is the policy of the United States to standardize equipment, including weapons systems, ammunition, and fuel, procured for the use of the armed forces of the United States stationed in Europe under the North Atlantic Treaty or at least to make that equipment interoperable with equipment of other members of the North Atlantic Treaty Organization. To carry out this policy, the Secretary of Defense shall—

(1) assess the costs and possible loss of nonnuclear combat effectiveness of the military forces of the members of the Organization caused by the failure of the members to standardize equipment;

(2) maintain a list of actions to be taken, including an evaluation of the priority and effect of the action, to standardize equipment

that may improve the overall nonnuclear defense capability of the Organization or save resources for the Organization; and

(3) initiate and carry out, to the maximum extent feasible, procurement procedures to acquire standardized or interoperable equipment, considering the cost, function, quality, and availability of the equipment.

(b) Progress in realizing the objectives of standardization and interoperability would be enhanced by expanded inter-Allied procurement of arms and equipment within the North Atlantic Treaty Organization. Expanded inter-Allied procurement would be made easier by greater reliance on licensing and coproduction cooperative agreements among the signatories of the North Atlantic Treaty. If constructed to preserve the efficiencies associated with economies of scale, the agreements could minimize potential economic hardship to parties to the agreements and increase the survivability, in time of war, of the North Atlantic Alliance's armaments production base by dispersing manufacturing facilities. In conjunction with other members of the Organization and to the maximum extent feasible, the Secretary shall—

(1) identify areas in which those cooperative agreements may be made with members of the Alliance; and

(2) negotiate those agreements.

(c)(1) It is the sense of Congress that weapons systems being developed wholly or primarily for employment in the North Atlantic Treaty Organization theater should conform to a common Organization requirement in order to proceed toward joint doctrine and planning and to facilitate maximum feasible standardization and interoperability of equipment, and that a common Organization requirement should be understood to include a common definition of the military threat to the members of the Organization.

(2) It is further the sense of Congress that standardization of weapons and equipment within the Organization on the basis of a ''two-way street'' concept of cooperation in defense procurement between Europe and North America can only work in a realistic sense if the European nations operate on a united and collective basis. Therefore, the governments of Europe are encouraged to accelerate their present efforts to achieve European armaments collaboration among all European members of the Organization.

(d) Before February 1, 1989, and biennially thereafter, the Secretary shall submit a report to Congress that includes—

(1) each specific assessment and evaluation made and the results of each assessment and evaluation, and the results achieved with the members of the North Atlantic Treaty Organization, under subsections (a)(1) and (2) and (b);

(2) procurement action initiated on each new major system not complying with the policy of subsection (a);

(3) procurement action initiated on each new major system that is not standardized or interoperable with equipment of other members of the Organization, including a description of the system chosen and the reason for choosing that system;

(4) the identity of—

(A) each program of research and development for the armed forces of the United States stationed in Europe that supports, conforms, or both, to common Organization requirements of developing weapon systems for use by the Organization, including a common definition of the military threat to the Organization; and

(B) the common requirements of the Organization to which those programs conform or which they support;

(5) action of the Alliance toward common Organization requirements if none exist;

(6) efforts to establish a regular procedure and mechanism in the Organization to determine common military requirements;

(7) a description of each existing and planned program of the Department of Defense that supports the development or procurement of a weapon system or other military equipment originally developed or procured by members of the Organization other than the United States and for which funds have been authorized to be appropriated for the fiscal year in which the report is submitted, including a summary listing of the amount of funds—

(A) appropriated for those programs for the fiscal year in which the report is submitted; and

(B) requested, or proposed to be requested, for those programs for each of the 2 fiscal years following the fiscal year for which the report is submitted; and

(8) a description of each weapon system or other military equipment originally developed or procured in the United States and that is being developed or procured by members of the Organization other than the United States during the fiscal year for which the report is submitted.

(e) If the Secretary decides that procurement of equipment manufactured outside the United States is necessary to carry out the policy of subsection (a), the Secretary may determine under section 2 of title III of the Act of March 3, 1933 (41 U.S.C. 10a), that acquiring that equipment manufactured in the United States is inconsistent with the public interest.

(f) The Secretary shall submit the results of each assessment and evaluation made under subsection (a)(1) and (2) to the appropriate North Atlantic Treaty Organization body to become an integral part of the overall Organization review of force goals and development of force plans.

(Added Pub. L. 97–295, § 1(30)(A), Oct. 12, 1982, 96 Stat. 1294; amended Pub. L. 101–510, div. A, title XIII, § 1311(5), Nov. 5, 1990, 104 Stat. 1670.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2457(a)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (1st–3d sentences), 88 Stat. 402. Oct. 7, 1975, Pub. L. 94–106, § 814(a)(1), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(b)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(b) (1st–4th sentences), 90 Stat. 931.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2457(c)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(a) (1st, 2d sentences), (c), 90 Stat. 930, 931.
2457(d) (words before (1)), (1) (related to (a)(1) and (2)).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (5th sentence), 88 Stat. 402; Oct. 7, 1975, Pub. L. 94–106, § 814(c), 89 Stat. 540.
2457(d)(1) (related to (a)(3)).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(b) (last sentence), 90 Stat. 931.
2457(d)(2)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(b), 89 Stat. 540.
2457(d)(3)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(a)(3), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(d) (4)–(6).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, § 803(a) (3d–last sentences), 90 Stat. 930.
2457(d)(7), (8).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, 88 Stat. 399, § 302(c) (6th, last sentences); added Sept. 8, 1982, Pub. L. 97–252, § 1121, 96 Stat. 754.
2457(e)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, § 814(a)(2), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, § 802, 90 Stat. 930.
2457(f)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, § 302(c) (4th sentence), 88 Stat. 402.

In the introductory matter of subsection (a), before clause (1), the word ''equipment'' is substituted for ''impedimenta'' in section 302(c) of the Department of Defense Appropriation Authorization Act, 1975 (Pub. L. 93–365, Aug. 5, 1974, 88 Stat. 402), for clarity and for consistency with section 814(a)(1) of the Department of Defense Appropriation Authorization Act, 1976 (Pub. L. 94–106, Oct. 7, 1975, 89 Stat. 540), which is restated as part of this subsection.

In subsection (a)(1), the word ''undertake'' is omitted as surplus. The word ''members'' is substituted for ''countries'' for consistency. The words ''including the United States'' are omitted as unnecessary.

In subsection (a)(2), the words ''The Secretary of Defense shall also'' are omitted as unnecessary. The word ''maintain'' is substituted for ''develop'' because it is more appropriate.

In subsection (a)(3), the words ''of other members of the North Atlantic Treaty Organization whenever such equipment is to be used by personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty'' are omitted as unnecessary because of the restatement. The words ''Such procedures shall also take into . . . to be procured'' are omitted as unnecessary. The text of section 814(a)(1) (4th, last sentences) is omitted as executed.

In subsection (b), the words ''It is the sense of the Congress'', ''It is further the sense of Congress'', ''It is the Congress' considered judgment'', ''properly'', ''Accordingly'', and ''pursuant to these ends'' are omitted as unnecessary.

In subsection (c)(1), the word ''should'' is substituted for ''shall'' for clarity.

In subsection (d)(1), the word ''members'' is substituted for ''allies'' for consistency. The words ''The Secretary of Defense shall include in the report to the Congress required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(2), the words ''The report required under section 302(c) of Public Law 93–365 shall include'' are omitted as unnecessary because of the restatement.

In subsection (d)(3), the words ''he shall report that fact to the Congress in the annual report required under section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(4), the words ''The Secretary of Defense shall, in the reports required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(5), the words ''if none exist'' are substituted for ''In the absence of such common requirements'' to eliminate unnecessary words. The words ''the Secretary shall include a discussion of the'' are omitted as unnecessary because of the restatement.

In subsection (d)(6), the words ''The Secretary of Defense shall also report on'' are omitted as unnecessary because of the restatement.

In subsection (d)(7), the words ''those programs'' are substituted for ''all such existing and planned programs'' and ''all such programs'' to eliminate unnecessary words.

In subsection (f), the words ''The Secretary shall submit the results of these . . . to Congress'' are omitted as unnecessary because of the source provisions restated in subsection (d)(1). The word ''submit'' is substituted for ''cause to be brought'' to eliminate unnecessary words. The words ''in order that the suggested actions and recommendations can'' are omitted as unnecessary because of the restatement.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''Before February 1, 1989, and biennially thereafter'' for ''Before February 1 of each year''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2350a of this title.

§ 2458. Inventory management policies

(a) POLICY REQUIRED.—The Secretary of Defense shall issue a single, uniform policy on the management of inventory items of the Department of Defense. Such policy shall—

(1) establish maximum levels for inventory items sufficient to achieve and maintain only those levels for inventory items necessary for the national defense;

(2) provide guidance to item managers and other appropriate officials on how effectively to eliminate wasteful practices in the acquisition and management of inventory items; and

(3) set forth a uniform system for the valuation of inventory items by the military departments and Defense Agencies.

(b) PERSONNEL EVALUATIONS.—The Secretary of Defense shall establish procedures to ensure that, with regard to item managers and other personnel responsible for the acquisition and management of inventory items of the Department of Defense, personnel appraisal systems for such personnel give appropriate consideration to efforts made by such personnel to eliminate wasteful practices and achieve cost savings in the acquisition and management of inventory items.

(Added Pub. L. 101–510, div. A, title III, § 323(a)(1), Nov. 5, 1990, 104 Stat. 1530; amended Pub. L. 102–190, div. A, title III, § 347(a), Dec. 5, 1991, 105 Stat. 1347.)

AMENDMENTS

1991—Subsec. (a)(3). Pub. L. 102–190 added par. (3).

IMPLEMENTATION OF 1991 AMENDMENT

Secretary of Defense to establish uniform system of valuation described in subsec. (a)(3) of this section not later than 180 days after Dec. 5, 1991, see section 347(c)

of Pub. L. 102–190, set out as a note under section 2721 of this title.

DATE OF ISSUANCE OF POLICY

Section 323(b) of Pub. L. 101–510 provided that: ''The policy required by section 2458(a) of title 10, United States Code (as added by subsection (a)), shall be issued not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990].''

CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

Sec.
2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance.
2462. Contracting for certain supplies and services required when cost is lower.
2463. Reports on savings or costs from increased use of DOD civilian personnel.
2464. Core logistics functions.
2465. Prohibition on contracts for performance of firefighting or security-guard functions.
2466. Limitations on the performance of depot-level maintenance of materiel.
2467. Cost comparisons: requirements with respect to retirement costs and consultation with employees.
2468. Military installations: authority of base commanders over contracting for commercial activities.
2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition.
2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies.
2471. Persons outside the Department of Defense: lease of excess depot-level equipment and facilities by.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title III, §§335(b), 336(b), Oct. 5, 1994, 108 Stat. 2717, added items 2470 and 2471.

1992—Pub. L. 102–484, div. A, title III, §353(b), Oct. 23, 1992, 106 Stat. 2379, added item 2469.

1991—Pub. L. 102–190, div. A, title III, §314(a)(2), Dec. 5, 1991, 105 Stat. 1337, substituted ''Limitations on the performance of depot-level maintenance of materiel'' for ''Prohibition on certain depot maintenance workload competitions'' in item 2466.

1989—Pub. L. 101–189, div. A, title XI, §1131(a)(2), Nov. 29, 1989, 103 Stat. 1561, added item 2468.

1988—Pub. L. 100–456, div. A, title III, §§326(b), 331(b), Sept. 29, 1988, 102 Stat. 1956, 1958, added items 2466 and 2467.

§2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance

(a) REQUIRED NOTICE TO CONGRESS.—A commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees may not be converted to performance by a private contractor unless the Secretary of Defense provides to Congress in a timely manner—

(1) notification of any decision to study such function for possible performance by a private contractor;

(2) a detailed summary of a comparison of the cost of performance of such function by Department of Defense civilian employees and by private contractor which demonstrates that the performance of such function by a private contractor will result in a cost savings to the Government over the life of the contract and a certification that the entire cost comparison is available;

(3) a certification that the Government calculation for the cost of performance of such function by Department of Defense civilian employees is based on an estimate of the most efficient and cost effective organization for performance of such function by Department of Defense civilian employees; and

(4) a report, to be submitted with the certification required by paragraph (3), showing—

(A) the potential economic effect on employees affected, and the potential economic effect on the local community and Federal Government if more than 75 employees are involved, of contracting for performance of such function;

(B) the effect of contracting for performance of such function on the military mission of such function; and

(C) the amount of the bid accepted for the performance of such function by the private contractor whose bid is accepted and the cost of performance of such function by Department of Defense civilian employees, together with costs and expenditures which the Government will incur because of the contract.

(b) CONGRESSIONAL NOTIFICATION OF DECISION TO CONVERT.—If, after completion of the studies required for completion of the certification and report required by paragraphs (3) and (4) of subsection (a), a decision is made to convert the function to contractor performance, the Secretary of Defense shall notify Congress of such decision.

(c) ANNUAL REPORTS.—Not later than February 1 of each fiscal year, the Secretary of Defense shall submit to Congress a written report describing the extent to which commercial and industrial type functions were performed by Department of Defense contractors during the preceding fiscal year. The Secretary shall include in each such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense civilian employees, and the percentage of such functions that will be performed by private contractors, during the fiscal year during which the report is submitted.

(d) WAIVER FOR SMALL FUNCTIONS.—Subsections (a) through (c) shall not apply to a commercial or industrial type function of the Department of Defense that is being performed by 45 or fewer Department of Defense civilian employees.

(e) WAIVER FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED PERSONS.—Subsections (a) through (c) shall not apply to a commercial or industrial type function of the Department of Defense that—

(1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Wagner-O'Day Act; or

(2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped persons in accordance with that Act.

(f) ADDITIONAL LIMITATIONS.—(1) A commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees may not be converted to performance by a private contractor to circumvent a civilian personnel ceiling.

(2) In no case may a commercial or industrial type function being performed by Department of Defense personnel be modified, reorganized, divided, or in any way changed for the purpose of exempting from the requirements of subsection (a) the conversion of all or any part of such function to performance by a private contractor.

(g) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 851; amended Pub. L. 101–189, div. A, title XI, § 1132, Nov. 29, 1989, 103 Stat. 1561.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 96–342, title V, § 502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, § 1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, § 1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, § 1221, Nov. 14, 1986, 100 Stat. 3976.

REFERENCES IN TEXT

The Wagner-O'Day Act, referred to in subsec. (e)(2), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 46 of Title 41 and Tables.

AMENDMENTS

1989—Subsecs. (e) to (g). Pub. L. 101–189 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

§ 2462. Contracting for certain supplies and services required when cost is lower

(a) IN GENERAL.—Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, Executive order, or regulation) than the cost at which the Department can provide the same supply or service.

(b) REALISTIC AND FAIR COST COMPARISONS.—For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

(Added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–661, div. A, title XII, § 1223, Nov. 14, 1986, 100 Stat. 3977.

§ 2463. Reports on savings or costs from increased use of DOD civilian personnel

(a) IN GENERAL.—Whenever during a fiscal year to which this section applies the performance of a commercial or industrial type activity of the Department of Defense that is being performed by 50 or more employees of a private contractor is changed to performance by civilian employees of the Department of Defense, the Secretary of Defense shall maintain data in which a comparison is made of the estimated costs of (1) continued performance of such activity by private contractor employees, and (2) performance of such activity by civilian employees of the Department of Defense.

(b) APPLICABILITY OF SECTION.—This section applies only with respect to a fiscal year during which there is no statutory limit (commonly known as an ''end strength'') on the number of civilian employees that may be employed by the Department of Defense as of the last day of that fiscal year.

(Added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, § 1301(14), Nov. 5, 1990, 104 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–661, div. A, title XII, § 1224, Nov. 14, 1986, 100 Stat. 3977.

AMENDMENTS

1990—Subsecs. (b), (c). Pub. L. 101–510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''SEMIANNUAL REPORT ON COSTS AND SAVINGS.—As soon as practicable after the end of the first six months, and after the end of the second six months, of a fiscal year to which this section applies, the Secretary of Defense shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives a report showing the estimated savings or loss to the United States, during the preceding six-month period, that is reflected in the data maintained under subsection (a).''

1989—Subsec. (b). Pub. L. 101–189 substituted ''Committees on Appropriations'' for ''Committee on Appropriations''.

§ 2464. Core logistics functions

(a) NECESSITY FOR CORE LOGISTICS CAPABILITY.—(1) It is essential for the national defense that Department of Defense activities maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and

resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify those logistics activities that are necessary to maintain the logistics capability described in paragraph (1).

(b) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of a logistics activity identified by the Secretary under subsection (a)(2), and performance of a function of the Department of Defense described in section 1231(b) of the Department of Defense Authorization Act, 1986 (Public Law 99–145; 99 Stat. 731), may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A–76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A–76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics activity or function and provide that performance of such activity or function shall be considered for conversion to contractor performance in accordance with OMB Circular A–76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the activity or function is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such activity or function is no longer required for national defense reasons.

(3) A waiver under paragraph (2) may not take effect until—

(A) the Secretary submits a report on the waiver to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives; and

(B) a period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

(4) For purposes of paragraph (3)(B), the continuity of a session of Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 20-day period.

(Added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, §1622(c)(7), Nov. 29, 1989, 103 Stat. 1604.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–525, title III, §307, Oct. 19, 1984, 98 Stat. 2514, as amended by Pub. L. 99–145, title XII, §1231(f), Nov. 8, 1985, 99 Stat. 733.

REFERENCES IN TEXT

Section 1231(b) of the Department of Defense Authorization Act, 1986 (Public Law 99–145; 99 Stat. 731), referred to in subsec. (b)(1), is section 1231(b) of Pub. L. 99–145, title XII, Nov. 8, 1985, 99 Stat. 731, which was formerly set out as a note under section 2304 of this title.

AMENDMENTS

1989—Subsec. (b)(3)(A). Pub. L. 101–189 substituted ''Committees on Appropriations'' for ''Committee on Appropriations''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply—

(1) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness;

(2) to a contract to be carried out on a Government-owned but privately operated installation; or

(3) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(Added Pub. L. 99–661, div. A, title XII, §1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, §2693; amended Pub. L. 100–180, div. A, title XI, §1112(a)–(b)(2), Dec. 4, 1987, 101 Stat. 1147; renumbered §2465, Pub. L. 100–370, §2(b)(1), July 19, 1988, 102 Stat. 854.)

AMENDMENTS

1988—Pub. L. 100–370 renumbered section 2693 of this title as this section.

1987—Pub. L. 100–180 inserted ''or security-guard'' before ''functions'' in section catchline and subsec. (a), and substituted ''a function'' for ''the function'' in subsec. (b)(1).

§2466. Limitations on the performance of depot-level maintenance of materiel

(a) PERCENTAGE LIMITATION.—Not more than 40 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Any such funds that are not used for such a contract shall be used for the performance of depot-level maintenance and repair workload by employees of the Department of Defense.

(b) PROHIBITION ON MANAGEMENT BY END STRENGTH.—The civilian employees of the Department of Defense involved in the depot-level maintenance and repair of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year. Such employees shall be managed

solely on the basis of the available workload and the funds made available for such depot-level maintenance and repair.

(c) WAIVER OF LIMITATION.—The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(d) EXCEPTION.—Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.

(e) REPORT.—Not later than January 15, 1995, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of funds referred to in subsection (a) that was used during fiscal year 1994 to contract for the performance by non-Federal Government personnel of depot-level maintenance and repair workload.

(Added Pub. L. 100–456, div. A, title III, § 326(a), Sept. 29, 1988, 102 Stat. 1955; amended Pub. L. 101–189, div. A, title III, § 313, Nov. 29, 1989, 103 Stat. 1412; Pub. L. 102–190, div. A, title III, § 314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 102–484, div. A, title III, § 352(a)–(c), Oct. 23, 1992, 106 Stat. 2378; Pub. L. 103–337, div. A, title III, § 332, Oct. 5, 1994, 108 Stat. 2715.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 332(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

''(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

''(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

''(A) For fiscal year 1993, 50 percent.

''(B) For fiscal year 1994, 55 percent.

''(C) For fiscal year 1995, 60 percent.''

Subsec. (b). Pub. L. 103–337, § 332(b), inserted ''and repair'' after ''maintenance'' in two places.

Subsec. (e). Pub. L. 103–337, § 332(c), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

''(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).''

1992—Subsec. (a). Pub. L. 102–484, § 352(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''PERCENTAGE LIMITATION.—Not less than 60 percent of the funds available for each fiscal year for depot-level maintenance of materiel managed for the Department of the Army and the Department of the Air Force shall be used for the performance of such depot-level maintenance by employees of the Department of Defense.''

Subsec. (c). Pub. L. 102–484, § 352(b), substituted ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense'' for ''The Secretary of the Army, with respect to the Department of the Army, and the Secretary of the Air Force, with respect to the Department of the Air Force,''.

Subsec. (e). Pub. L. 102–484, § 352(c), designated existing provisions as par. (1) and added par. (2).

1991—Pub. L. 102–190 substituted section catchline for one which read ''Prohibition on certain depot maintenance workload competitions'' and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, from carrying out a competition for such selection—

''(1) between or among maintenance activities of the Department of the Army and the Department of the Air Force; or

''(2) between a maintenance activity of either such department and a private contractor.''

1989—Pub. L. 101–189, in introductory provisions, substituted ''shall prohibit'' for ''may not require'', ''Army and'' for ''Army or'', and ''from carrying out'' for ''to carry out''.

CONGRESSIONAL FINDINGS

Section 331 of Pub. L. 103–337 provided that: ''Congress makes the following findings:

''(1) By providing the Armed Forces with a critical capacity to respond to the needs of the Armed Forces for depot-level maintenance and repair of weapon systems and equipment, the depot-level maintenance and repair activities of the Department of Defense play an essential role in maintaining the readiness of the Armed Forces.

''(2) It is appropriate for the capability of the depot-level maintenance and repair activities of the Department of Defense to perform maintenance and repair of weapon systems and equipment to be based on policies that take into consideration the readiness, mobilization, and deployment requirements of the military departments.

''(3) It is appropriate for the management of employees of the depot-level maintenance and repair activities of the Department of Defense to be based on the amount of workload necessary to be performed by such activities to maintain the readiness of the weapon systems and equipment of the military departments and on the funds made available for the performance of such workload.''

REUTILIZATION INITIATIVE FOR DEPOT-LEVEL ACTIVITIES

Section 337 of Pub. L. 103–337 provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall conduct activities to encourage commercial firms to enter into partnerships with depot-level activities of the military departments for the purposes of—

''(1) demonstrating commercial uses of the depot-level activities that are related to the principal mission of the depot-level activities;

''(2) preserving employment and skills of employees currently employed by the depot-level activities or providing for the reemployment and retraining of employees who, as the result of the closure, realignment, or reduced in-house workload of such activities, may become unemployed; and

''(3) supporting the goals of other defense conversion, reinvestment, and transition assistance programs while also allowing the depot-level activities to remain in operation to continue to perform their defense readiness mission.

''(b) CONDITIONS.—The Secretary shall ensure that activities conducted under this section—

''(1) do not interfere with the closure or realignment of a depot-level activity of the military departments under a base closure law; and

''(2) do not adversely affect the readiness or primary mission of a participating depot-level activity.''

CONTINUATION OF PERCENTAGE LIMITATIONS ON PERFORMANCE OF DEPOT-LEVEL MAINTENANCE

Pub. L. 103–160, div. A, title III, §343, Nov. 30, 1993, 107 Stat. 1624, provided that: ''The Secretary of Defense shall ensure that the percentage limitations applicable to the depot-level maintenance workload performed by non-Federal Government personnel set forth in section 2466 of title 10, United States Code, are adhered to.''

EFFECT OF 1992 AMENDMENTS ON EXISTING CONTRACTS

Section 352(d) of Pub. L. 102–484 provided that: ''The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code, as amended by subsection (a).''

PROHIBITION ON CANCELLATION OF CONTRACTS IN EFFECT ON DECEMBER 5, 1991

Section 314(a)(3) of Pub. L. 102–190 provided that: ''The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a).''

COMPETITION PILOT PROGRAM; REVIEW AND REPORT

Section 314(b)–(d) of Pub. L. 102–190, as amended by Pub. L. 102–484, div. A, title III, §354, Oct. 23, 1992, 106 Stat. 2379, provided that:

''[(b) Repealed. Pub. L. 102–484, div. A, title III, §354, Oct. 23, 1992, 106 Stat. 2379.]

''(c) REVIEW BY COMPTROLLER GENERAL.—Not later than February 1, 1994, the Comptroller General shall submit to Congress an evaluation of all depot maintenance workloads of the Department of Defense, including Navy depot maintenance workloads, that are performed by an entity selected pursuant to competitive procedures.

''(d) REPORT BY SECRETARY OF DEFENSE.—Not later than December 1, 1993, the Secretary of Defense shall submit to Congress a report—

''(1) containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads; and

''(2) describing the cost savings anticipated through the use of those procedures.''

PILOT PROGRAM FOR DEPOT MAINTENANCE WORKLOAD COMPETITION

Pub. L. 101–510, div. A, title IX, §922, Nov. 5, 1990, 104 Stat. 1627, authorized a depot maintenance workload competition pilot program during fiscal year 1991, outlined elements of the program, and provided for a report not later than Mar. 31, 1992, to congressional defense committees, prior to repeal by Pub. L. 102–190, div. A, title III, §314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

§2467. Cost comparisons: requirements with respect to retirement costs and consultation with employees

(a) REQUIREMENT TO INCLUDE RETIREMENT COSTS.—(1) In any comparison conducted by the Department of Defense under Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) of the cost of performing commercial activities by Department of Defense personnel and the cost of performing such activities by contractor personnel, the Secretary of Defense shall include retirement system costs (as described in paragraphs (2) and (3)) of both the Department of Defense and the contractor.

(2) The retirement system costs of the Department of Defense shall include (to the extent applicable) the following:

(A) The cost of the Federal Employees' Retirement System, valued by using the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code).

(B) The cost of the Civil Service Retirement System under subchapter III of chapter 83 of such title 5.

(C) The cost of the thrift savings plan under subchapter III of chapter 84 of such title 5.

(D) The cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

(3) The retirement system costs of the contractor shall include the cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986, the cost of thrift or other retirement savings plans, and other relevant retirement costs.

(b) REQUIREMENT TO CONSULT DOD EMPLOYEES.—(1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A–76 whether to convert to contractor performance any commercial activity of the Department—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(B) may consult with such employees on other matters relating to that determination.

(2)(A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(Added Pub. L. 100–456, div. A, title III, §331(a), Sept. 29, 1988, 102 Stat. 1957.)

REFERENCES IN TEXT

Section 3111(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(D), (3), is classified to section 3111(a) of Title 26, Internal Revenue Code.

§2468. Military installations: authority of base commanders over contracting for commercial activities

(a) AUTHORITY OF BASE COMMANDER.—The Secretary of Defense shall direct that the com-

mander of each military installation shall have the authority and the responsibility to enter into contracts in accordance with this section for the performance of a commercial activity on the military installation.

(b) YEARLY DUTIES OF BASE COMMANDER.—To enter into a contract under subsection (a) for a fiscal year, the commander of a military installation shall—

(1) prepare an inventory for that fiscal year of commercial activities carried out by Government personnel on the military installation;

(2) decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy); and

(3) conduct a solicitation for contracts for the performance of those commercial activities selected for conversion to contractor performance under the Circular A–76 process.

(c) LIMITATIONS.—(1) The Secretary of Defense shall prescribe regulations under which the commander of each military installation may exercise the authority and responsibility provided under subsection (a).

(2) The authority and responsibility provided under subsection (a) are subject to the authority, direction, and control of the Secretary.

(d) ASSISTANCE TO DISPLACED EMPLOYEES.—If the commander of a military installation enters into a contract under subsection (a), the commander shall, to the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of that contract.

(e) MILITARY INSTALLATION DEFINED.—In this section, the term ''military installation'' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located within the United States, the Commonwealth of Puerto Rico, or Guam.

(f) TERMINATION OF AUTHORITY.—The authority provided to commanders of military installations by subsection (a) shall terminate on September 30, 1995.

(Added Pub. L. 101–189, div. A, title XI, § 1131(a)(1), Nov. 29, 1989, 103 Stat. 1560; amended Pub. L. 101–510, div. A, title IX, § 921, Nov. 5, 1990, 104 Stat. 1627; Pub. L. 102–190, div. A, title III, § 315(a), Dec. 5, 1991, 105 Stat. 1337; Pub. L. 103–160, div. A, title III, § 370(c), Nov. 30, 1993, 107 Stat. 1634; Pub. L. 103–337, div. A, title III, § 386(c), Oct. 5, 1994, 108 Stat. 2742.)

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–337 substituted ''September 30, 1995'' for ''September 30, 1994''.

1993—Subsec. (f). Pub. L. 103–160 substituted ''September 30, 1994'' for ''September 30, 1993''.

1991—Subsec. (f). Pub. L. 102–190 substituted ''September 30, 1993'' for ''September 30, 1991''.

1990—Subsec. (f). Pub. L. 101–510 substituted ''September 30, 1991'' for ''September 30, 1990''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 315(b) of Pub. L. 102–190 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of September 30, 1991.''

EFFECTIVE DATE

Section 1131(b) of Pub. L. 101–189 provided that: ''Section 2468 of title 10, United States Code (as added by subsection (a)), shall take effect as of October 1, 1989.''

§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition

(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense shall ensure that the performance of a depot-level maintenance or repair workload described in subsection (b) is not changed to performance by a contractor or by another depot-level activity of the Department of Defense unless the change is made using—

(1) merit-based selection procedures for competitions among all depot-level activities of the Department of Defense; or

(2) competitive procedures for competitions among private and public sector entities.

(b) SCOPE.—Subsection (a) applies to any depot-level maintenance or repair workload that has a value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense.

(c) INAPPLICABILITY OF OMB CIRCULAR A–76.—Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) does not apply to a performance change to which subsection (a) applies.

(Added Pub. L. 102–484, div. A, title III, § 353(a), Oct. 23, 1992, 106 Stat. 2378; amended Pub. L. 103–160, div. A, title III, § 346, title XI, § 1182(a)(7), Nov. 30, 1993, 107 Stat. 1625, 1771; Pub. L. 103–337, div. A, title III, § 338, Oct. 5, 1994, 108 Stat. 2718.)

AMENDMENTS

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section read as follows:

''(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload.

''(b) INAPPLICABILITY OF OMB CIRCULAR A–76.—The use of Office of Management and Budget Circular A–76 shall not apply to a performance change under subsection (a).''

1993—Pub. L. 103–160, § 346, amended section, as amended by Pub. L. 103–160, § 1182(a)(7), (h), by designating existing provisions as subsec. (a), inserting heading, striking out ''threshold'' before ''value'', substituting ''to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload'' for ''unless the Secretary uses competitive procedures to make the change'', and adding subsec. (b).

Pub. L. 103–160, § 1182(a)(7), struck out '', prior to any such change,'' after ''Department of Defense unless''.

§ 2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies

A depot-level activity of the Department of Defense shall be eligible to compete for the performance of any depot-level maintenance and

repair workload of a Federal agency for which competitive procedures are used to select the entity to perform the workload.

(Added Pub. L. 103–337, div. A, title III, §335(a), Oct. 5, 1994, 108 Stat. 2716.)

§2471. Persons outside the Department of Defense: lease of excess depot-level equipment and facilities by

(a) AUTHORITY TO LEASE EXCESS EQUIPMENT AND FACILITIES.—Subject to subsection (b), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may lease excess equipment and facilities of a depot-level activity of the military department, or the Defense Agency, to a person outside the Department of Defense.

(b) LIMITATIONS.—A lease under subsection (a) may be entered into only if—

(1) the lease of any such equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned;

(2) the person leasing such equipment or facilities agrees to reimburse the Department of Defense for the costs (both direct and indirect costs, including any rental costs, as determined[1] the Secretary concerned) attributable to the lease of such equipment or facilities;

(3) the person leasing such equipment or facilities agrees to hold harmless and indemnify the United States, except in cases of willful conduct or gross negligence, from any claim for damages or injury to any person or property arising out[2] the lease of such equipment or facilities; and

(4) the person leasing such equipment or facilities agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned to suspend or terminate the lease during a war or national emergency.

(c) CREDIT TO TREASURY.—Any reimbursement (including the payment of rental costs) received under this section shall be credited to the Treasury as miscellaneous receipts.

(Added Pub. L. 103–337, div. A, title III, §336(a), Oct. 5, 1994, 108 Stat. 2717.)

CHAPTER 147—UTILITIES AND SERVICES

Sec.
2481. Utilities and services: sale; expansion and extension of systems and facilities.
2482. Commissary stores: private operation.
2483. Sale of electricity from alternate energy and cogeneration production facilities.
2484. Commissary stores: expenses.
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2487. Commissary stores: limitations on release of sales information.
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2489. Overseas package stores: treatment of United States wines.
Sec.
2490. Utility services: furnishing for certain buildings.
[2490a. Renumbered.]

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, §1182(a)(8)(B), Nov. 30, 1993, 107 Stat. 1771, struck out item 2490a ''Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds''.

1992—Pub. L. 102–484, div. A, title III, §§362(b), 364(b)(1), Oct. 23, 1992, 106 Stat. 2380, 2382, substituted ''limitations'' for ''limitation'' in item 2487 and added item 2490a.

1990—Pub. L. 101–510, div. A, title III, §324(b)(2), Nov. 5, 1990, 104 Stat. 1531, amended item 2485 generally, substituting ''Donation of unusable food: commissary stores and other activities'' for ''Commissary stores: donation of unmarketable food''.

1988—Pub. L. 100–370, §1(j)(2), July 19, 1988, 102 Stat. 848, added item 2490.

1987—Pub. L. 100–180, div. A, title III, §§311(a)(2), 313(a)(3), Dec. 4, 1987, 101 Stat. 1073, 1074, inserted ''and pricing'' in item 2486 and added item 2489.

1986—Pub. L. 99–661, div. A, title III, §313(c), Nov. 14, 1986, 100 Stat. 3853, added items 2486, 2487, and 2488.

1985—Pub. L. 99–145, title XIV, §1460(b), Nov. 8, 1985, 99 Stat. 765, added item 2485.

1984—Pub. L. 98–525, title XIV, §1401(i)(2), Oct. 19, 1984, 98 Stat. 2620, added item 2484.

Pub. L. 98–407, title VIII, §810(b), Aug. 28, 1984, 98 Stat. 1523, added item 2483.

CROSS REFERENCES

Particular provisions relating to—
Air Force, see section 9591 et seq. of this title.
Army, see section 4591 et seq. of this title.
Property records, basis and reports, see section 2721 of this title.

§2481. Utilities and services: sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural, manufactured, or mixed gas.
(7) Ice.
(8) Mechanical refrigeration.
(9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 141; Aug. 14, 1959, Pub. L. 86–156, 73 Stat. 338.)

[1] So in original. Probably should be followed by ''by''.
[2] So in original. Probably should be followed by ''of''.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2481(a)	5:626s. 5:626s–1 (less words between semicolon and colon). 10:1269. 10:1269a (less words between semicolon and colon). 34:553a. 34:553b (less words between semicolon and colon).	July 30, 1947, ch. 394, 61 Stat. 675; Aug. 8, 1949, ch. 403, § 5, 63 Stat. 576.
2481(b)	5:626s–1 (words between semicolon and colon). 10:1269a (words between semicolon and colon). 34:553b (words between semicolon and colon).	
2481(c)	5:626s–2. 10:1269b. 34:553c.	

In subsection (a), the words ''within his establishment'', ''of time'', and the opening clauses of 5:626s–1, 10:1269a, and 34:553b, are omitted as surplusage. The words ''not available from another local source'' are substituted for the words ''not otherwise available from local private or public sources''.

In subsection (b), the words ''of sales under subsection (a)'' are substituted for the words ''received for any such utilities and related services sold pursuant to the authority of said sections''. The words ''or appropriations'' are omitted as surplusage.

AMENDMENTS

1959—Subsec. (a). Pub. L. 86–156, § 1(1), substituted ''concerned'' for ''of a military department'' and inserted ''or Coast Guard,'' after ''Marine Corps,''.

Subsec. (c). Pub. L. 86–156, § 1(2), struck out ''of the military department'' after ''Secretary''.

CROSS REFERENCES

Extension telephones in naval quarters, see section 7576 of this title.

Young Men's Christian Association buildings, heat and light furnished by Secretary of the Navy, see section 7580 of this title.

§ 2482. Commissary stores: private operation

Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 141; Sept. 29, 1988, Pub. L. 100–456, div. A, title III, § 321, 102 Stat. 1952.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2482	[Uncodified].	Aug. 1, 1953, ch. 305, § 624 (last proviso), 67 Stat. 353.

This section is codified as permanent law on the basis of an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, dated September 28, 1954. The words ''and privately owned organizations'' are omitted as surplusage since under 1 U.S.C. 1 ''person'' includes such an organization.

AMENDMENTS

1988—Pub. L. 100–456 inserted at end ''A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.''

DEMONSTRATION PROGRAM FOR OPERATION OF CERTAIN COMMISSARY STORES BY NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 102–484, div. A, title III, § 363, Oct. 23, 1992, 106 Stat. 2380, provided that:

''(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall establish a demonstration program to determine the feasibility of having nonappropriated fund instrumentalities operate commissary stores at military installations.

''(2) Under the program referred to in paragraph (1), the Secretary of Defense shall select nonappropriated fund instrumentalities to operate commissary stores located at military installations selected by the Secretary under subsection (b).

''(b) SELECTION OF MILITARY INSTALLATIONS.—For participation in such program, the Secretary shall select not less than one nor more than three military installations in the United States, including at least one installation where National Guard personnel, other reserve component personnel, and their dependents comprise the predominant number of the users of the facilities and services of the installation.

''(c) PROGRAM REQUIREMENT AND LIMITATION.—(1) Except as provided in paragraph (3), commissary stores operated under such program shall be operated in accordance with section 2484 of title 10, United States Code, relating to the payment of costs by the Department of Defense in connection with the operation of commissary stores.

''(2) Except as provided in paragraph (3), the Secretary of Defense may, subject to such section, authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency to the nonappropriated fund instrumentalities selected under subsection (a)(2) for the purpose of operating combined exchange and commissary stores under such program.

''(3) Appropriated funds may not be used pursuant to such section to pay costs associated with the direct support and operation of combined exchange and commissary stores under such program.

''(d) PERIOD OF DEMONSTRATION PROGRAM.—A nonappropriated fund instrumentality selected under subsection (a)(2) shall operate commissary store facilities under such program for the period beginning on the date of the selection of the nonappropriated fund instrumentality and ending on the date of the expiration of the period referred to in subsection (e).

''(e) REPORT.—Not later than the expiration of the one-year period beginning on the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to the Congress a report on the implementation of such program. The report shall include the findings, conclusions, and recommendations of the Secretary, including a recommendation with respect to whether similar programs should be carried out at other military installations.

''(f) DEFINITION.—In this section, the term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Department of the Army or the Department of the Air Force (including the Army and Air Force Exchange Service) which is conducted for the comfort, pleasure,

contentment, or physical or mental improvement of members of the Armed Forces.''

CROSS REFERENCES

Naval commissary stores, see section 7601 et seq. of this title.

§2483. Sale of electricity from alternate energy and cogeneration production facilities

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(b)(1) Proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.

(2) Subject to the availability of appropriations for this purpose, proceeds credited under paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2865(a) of this title, including minor military construction projects authorized under section 2805 of this title that are designed to increase energy conservation.

(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress.

(Added Pub. L. 98–407, title VIII, §810(a), Aug. 28, 1984, 98 Stat. 1523; amended Pub. L. 103–160, div. B, title XXVIII, §2802, Nov. 30, 1993, 107 Stat. 1884.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160, §2802(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 103–160, §2802(b), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2865 of this title.

§2484. Commissary stores: expenses

(a) Except to the extent authorized in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense and except as provided in subsection (b), funds available to the Department of Defense may not be used to pay, in connection with the operation of any commissary store—

(1) the cost of purchases (including commercial transportation in the United States to the place of sale) and the cost of maintenance of operating equipment and supplies;

(2) the actual or estimated cost of utilities furnished by the United States;

(3) the actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of the commissary store; or

(4) costs incurred in connection with obtaining the face value amount of manufacturer or vendor cents-off discount coupons by the commissary store (or other entity acting on behalf of the commissary store).

(b) Appropriated funds may be used to pay any costs described in subsection (a) but only to the extent that appropriation accounts used to pay such costs are reimbursed for the payment of such costs, including, in the case of any costs incurred in connection with discount coupons referred to in subsection (a)(4), all fees or moneys received for handling or processing such coupons. The sales prices in commissary stores shall be adjusted to the extent necessary to provide sufficient gross revenues from the sales of such stores to make such reimbursements. Such adjustments shall be made under regulations prescribed by the Secretary of the military department concerned and approved by the Secretary of Defense.

(c) Under regulations prescribed by the Secretary of Defense, utilities may be furnished without cost to a commissary store outside the United States or in Alaska or Hawaii.

(d) Transportation outside the United States may be furnished in connection with the operation of commissary stores outside the United States.

(Added Pub. L. 98–525, title XIV, §1401(i)(1), Oct. 19, 1984, 98 Stat. 2619.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8010], 98 Stat. 1904, 1924.

Dec. 8, 1983, Pub. L. 98–212, title VII, §713, 97 Stat. 1440.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §714], 96 Stat. 1833, 1852.

Dec. 29, 1981, Pub. L. 97–114, title VII, §714, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96–527, title VII, §715, 94 Stat. 3083.

Dec. 21, 1979, Pub. L. 96–154, title VII, §715, 93 Stat. 1155.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §815, 92 Stat. 1246.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §814, 91 Stat. 902.

Sept. 22, 1976, Pub. L. 94–419, title VII, §714, 90 Stat. 1293.

Feb. 9, 1976, Pub. L. 94–212, title VII, §714, 90 Stat. 171.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §814, 88 Stat. 1227.

Jan. 2, 1974, Pub. L. 93–238, title VII, §714, 87 Stat. 1040.

Oct. 26, 1972, Pub. L. 92–570, title VII, §714, 86 Stat. 1198.

Dec. 18, 1971, Pub. L. 92–204, title VII, §714, 85 Stat. 729.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §814, 84 Stat. 2032.

Dec. 29, 1969, Pub. L. 91–171, title VI, §614, 83 Stat. 482.

Oct. 17, 1968, Pub. L. 90–580, title V, § 513, 82 Stat. 1132.
Sept. 29, 1967, Pub. L. 90–96, title VI, § 613, 81 Stat. 244.
Oct. 15, 1966, Pub. L. 89–687, title VI, § 613, 80 Stat. 993.
Sept. 29, 1965, Pub. L. 89–213, title VI, § 613, 79 Stat. 875.
Aug. 19, 1964, Pub. L. 88–446, title V, § 513, 78 Stat. 477.
Oct. 17, 1963, Pub. L. 88–149, title V, § 513, 77 Stat. 266.
Aug. 9, 1962, Pub. L. 87–577, title V, § 513, 76 Stat. 330.
Aug. 17, 1961, Pub. L. 87–144, title VI, § 613, 75 Stat. 377.
July 7, 1960, Pub. L. 86–601, title V, § 513, 74 Stat. 351.
Aug. 18, 1959, Pub. L. 86–166, title V, § 613, 73 Stat. 380.
Aug. 22, 1958, Pub. L. 85–724, title VI, § 613, 72 Stat. 725.
Aug. 2, 1957, Pub. L. 85–117, title VI, § 614, 71 Stat. 325.
July 2, 1956, ch. 488, title VI, § 614, 70 Stat. 469.
July 13, 1955, ch. 358, title VI, § 617, 69 Stat. 317.
June 30, 1954, ch. 432, title VII, § 717, 68 Stat. 353.
Aug. 1, 1953, ch. 305, title VI, § 624, 67 Stat. 353.
July 10, 1952, ch. 630, title VI, § 627, 66 Stat. 535.
Oct. 18, 1951, ch. 512, title VI, § 628, 65 Stat. 449.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2486 of this title.

§ 2485. Donation of unusable food: commissary stores and other activities

(a) The Secretary of a military department may donate food described in subsection (b) to authorized charitable nonprofit food banks.

(b) Food that may be donated under this section is commissary store food, mess food, meals ready-to-eat (MREs), and other food available to the Secretary of a military department that—

(1) is certified as edible by appropriate food inspection technicians;

(2) would otherwise be destroyed as unusable; and

(3) in the case of commissary store food, is unmarketable and unsaleable.

(c) In the case of commissary store food, a donation under this section shall take place at the site of the commissary that is donating the food.

(d) A donation under this section may only be made to an entity that is authorized by the Secretary of Defense or the Secretary of Health and Human Services to receive donations under this section.

(e) This section does not authorize any service (including transportation) to be provided in connection with a donation under this section.

(Added Pub. L. 99–145, title XIV, § 1460(a), Nov. 8, 1985, 99 Stat. 764; amended Pub. L. 101–510, div. A, title III, § 324(a), (b)(1), Nov. 5, 1990, 104 Stat. 1530.)

AMENDMENTS

1990—Pub. L. 101–510, § 324(b)(1), substituted ''Donation of unusable food: commissary stores and other activities'' for ''Commissary stores: donation of unmarketable food'' in section catchline.

Subsec. (a). Pub. L. 101–510, § 324(a)(1), struck out ''commissary store'' after ''donate''.

Subsec. (b). Pub. L. 101–510, § 324(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''Food that may be donated under this section is food of a commissary store—

''(1) that is—

''(A) unmarketable;

''(B) unsaleable; and

''(C) certified as edible by appropriate food inspection technicians; and

''(2) that would otherwise be destroyed as unusable.''

Subsec. (c). Pub. L. 101–510, § 324(a)(3), substituted ''In the case of commissary store food, a donation'' for ''A donation''.

§ 2486. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) Commissary stores are similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) Merchandise sold in commissary stores may include items in the following categories:

(1) Health and beauty aids.

(2) Meat and poultry.

(3) Fish and seafood.

(4) Produce.

(5) Food and non-food grocery items.

(6) Bakery goods.

(7) Dairy products.

(8) Tobacco products.

(9) Delicatessen items.

(10) Frozen foods.

(11) Other categories designated in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense.

(c) An adjustment of or surcharge on sales prices in commissary stores under section 2484(b) or 2685(a) of this title or for any other purpose shall be applied as a uniform percentage of the sales price of all merchandise sold in commissary stores.

(d) The Secretary of Defense shall prescribe regulations establishing uniform pricing policies for merchandise authorized for sale by this section. The policies in the regulations shall—

(1) require the establishment of a sales price of each item of merchandise at a level which will recoup the actual product cost of the item (consistent with this section and sections 2484 and 2685 of this title); and

(2) promote the lowest practical price of merchandise sold at commissary stores.

(Added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 100–180, div. A, title III, § 313(a)(1), (2), Dec. 4, 1987, 101 Stat. 1073, 1074.)

AMENDMENTS

1987—Pub. L. 100–180, § 313(a)(2), inserted ''and pricing'' in section catchline.

Subsec. (d). Pub. L. 100–180, § 313(a)(1), added subsec. (d).

REGULATIONS

Section 313(b) of Pub. L. 100–180 required Secretary of Defense to prescribe regulations required by subsec. (d) of this section not later than 90 days after Dec. 4, 1987.

§ 2487. Commissary stores: limitations on release of sales information

(a) AUTHORITY TO LIMIT RELEASE.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If

the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with subsection (b).

(2) Paragraph (1) applies to those portions of computer data generated by electronic scanners used in military commissaries, and those portions of reports generated by such scanners, that contain the following information:

(A) The unit price of items sold.

(B) The number of units of items sold.

(b) RELEASE UNDER COMPETITIVELY AWARDED AGREEMENTS.—The Secretary of Defense may enter into one or more agreements that provide for limited release of information described in subsection (a)(2). The Secretary shall use competitive procedures to enter into each such agreement. Each agreement shall require payment for such information and shall specify the amount of such payment.

(c) DEPOSIT OF RECEIPTS.—Amounts received by the United States under an agreement described in subsection (b) with respect to a commissary shall be deposited in the Commissary Trust Revolving Fund of the military department under which the commissary is operated.

(Added Pub. L. 99–661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 102–484, div. A, title III, §364(a), (b)(2), Oct. 23, 1992, 106 Stat. 2381, 2382.)

AMENDMENTS

1992—Subsecs. (a) and (b). Pub. L. 102–484, §364(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) In order to protect commercially valuable information, the Secretary of a military department, except as provided in subsection (b), may not release to the public those portions of computer data generated by electronic scanners used in military commissaries, and those portions of reports generated by such scanners, that contain the following information:

''(1) The unit prices of items sold.

''(2) The number of units of items sold.

''(b) Information subject to subsection (a) may be released under a written agreement. Any such agreement shall require payment for such information and shall specify the amount of such payment.''

Subsec. (c). Pub. L. 102–484, §364(b)(2), inserted heading.

§2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages

(a) The Secretary of Defense shall provide that—

(1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source, price and other factors considered, except that

(2) in the case of malt beverages and wine, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

(c) In this section:

(1) The term ''covered alcoholic beverage purchases'' means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

(2) The term ''State'' includes the District of Columbia.

(Added Pub. L. 99–661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3853; amended Pub. L. 100–180, div. A, title III, §312(a), Dec. 4, 1987, 101 Stat. 1073.)

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–180 struck out ''purchased for resale on a military installation located in the contiguous States'' after ''malt beverages and wines''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 312(b) of Pub. L. 100–180 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to purchases of malt beverages and wine after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

PROCUREMENT OF MALT BEVERAGES AND WINE BY NONAPPROPRIATED FUND ACTIVITY

Pub. L. 103–335, title VIII, §8058A, Sept. 30, 1994, 108 Stat. 2632, provided that: ''None of the funds appropriated by this Act [see Tables for classification] shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, §8099A, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, §9114, Oct. 6, 1992, 106 Stat. 1929.

Pub. L. 102–172, title VIII, §8111A, Nov. 26, 1991, 105 Stat. 1200.

Pub. L. 101–511, title VIII, §8068, Nov. 5, 1990, 104 Stat. 1889.

Pub. L. 101–165, title IX, §9093, Nov. 21, 1989, 103 Stat. 1149.

Pub. L. 100–463, title VIII, §8122, Oct. 1, 1988, 102 Stat. 2270–40.

Pub. L. 100–202, §101(b) [title VIII, §8081], Dec. 22, 1987, 101 Stat. 1329–43, 1329–76.

Pub. L. 99–500, §101(c) [title IX, §9090], Oct. 18, 1986, 100 Stat. 1783–82, 1783–116, and Pub. L. 99–591, §101(c) [title IX, §9090], Oct. 30, 1986, 100 Stat. 3341–82, 3341–116.

Pub. L. 99–190, §101(b) [title VIII, §8099], Dec. 19, 1985, 99 Stat. 1185, 1219.

§2489. Overseas package stores: treatment of United States wines

The Secretary of Defense shall ensure that each nonappropriated-fund activity engaged

principally in selling alcoholic beverage products in a packaged form (commonly referred to as a ''package store'') that is located at a military installation outside the United States shall give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

(Added Pub. L. 100–180, div. A, title III, § 311(a)(1), Dec. 4, 1987, 101 Stat. 1073.)

REGULATIONS DEADLINE

Section 311(b) of Pub. L. 100–180 directed Secretary of Defense to prescribe regulations to implement this section not later than 90 days after Dec. 4, 1987.

§ 2490. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services for—

(1) buildings constructed at private cost, as authorized by law; and

(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.

(Added Pub. L. 100–370, § 1(j)(1), July 19, 1988, 102 Stat. 848.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(b)], Dec. 19, 1985, 99 Stat. 1185.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

[§ 2490a. Renumbered § 2783]

CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

Subchapter		Sec.
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PRIOR PROVISIONS

A prior chapter 148, comprised of section 2501 et seq., relating to defense industrial base, was repealed, except for sections 2504 to 2507, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2504 to 2507 of that chapter were renumbered sections 2531 to 2534, respectively, of this chapter by Pub. L. 102–484, § 4202(a).

A prior chapter 149, comprised of sections 2511 to 2518, relating to manufacturing technology, was repealed, except for sections 2517 and 2518, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2517 and 2518 of that chapter were renumbered sections 2523 and 2522, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§ 4232(a), 4233(a), Oct. 23, 1992, 106 Stat. 2687.

Another prior chapter 149, comprised of section 2511, was successively renumbered chapter 150 of this title, comprised of section 2521, then chapter 152 of this title, comprised of section 2540 et seq.

A prior chapter 150, comprised of sections 2521 to 2526, relating to development of dual-use critical technologies, was repealed, except for sections 2524 to 2526, by Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2524, 2525, and 2526 of that chapter were renumbered sections 2513, 2517, and 2518, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§ 4223(a), 4227(a), 4228, Oct. 23, 1992, 106 Stat. 2681, 2685.

Another prior chapter 150, comprised of section 2521, was renumbered chapter 152 of this title, comprised of section 2540 et seq.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 50 App. section 2171.

SUBCHAPTER I—DEFINITIONS

Sec.
2491. Definitions.

§ 2491. Definitions

In this chapter:

(1) The term ''national technology and industrial base'' means the persons and organizations that are engaged in research, development, production, or maintenance activities conducted within the United States and Canada.

(2) The term ''dual-use'' with respect to products, services, standards, processes, or acquisition practices, means products, services, standards, processes, or acquisition practices, respectively, that are capable of meeting requirements for military and nonmilitary applications.

(3) The term ''dual-use critical technology'' means a critical technology that has military applications and nonmilitary applications.

(4) The term ''technology and industrial base sector'' means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, or production activities.

(5) The terms ''Federal laboratory'' and ''laboratory'' have the meaning given the term ''laboratory'' in section 12(d)(2) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)), except that such terms include a federally funded research and development center sponsored by a Federal agency.

(6) The term ''critical technology'' means a technology that is—

(A) a national critical technology; or

(B) a defense critical technology.

(7) The term ''national critical technology'' means a technology that appears on the list of national critical technologies contained in the most recent biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d) of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)).

(8) The term ''defense critical technology'' means a technology that appears on the list of

critical technologies contained, pursuant to subsection (b)(4) of section 2505 of this title, in the most recent national technology and industrial base assessment submitted to Congress by the Secretary of Defense pursuant to section 2506(e) of this title.

(9) The term ''eligible firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States; and

(B) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(i) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(ii) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States.

Such term includes a consortium of such companies or other business entities, as determined by the Secretary of Commerce.

(10) The term ''manufacturing technology'' means techniques and processes designed to improve manufacturing quality, productivity, and practices, including quality control, shop floor management, inventory management, and worker training, as well as manufacturing equipment and software.

(11) The term ''manufacturing extension program'' means a public or private, nonprofit program for the improvement of the quality, productivity, and performance of United States-based small manufacturing firms in the United States.

(12) The term ''United States-based small manufacturing firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) engages in manufacturing;

(B) has less than 500 employees; and

(C) is an eligible firm.

(13) The term ''Small Business Innovation Research Program'' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (*l*).

(14) The term ''Small Business Technology Transfer Program'' means the program established under the following provisions of such section:

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) and (n) through (p).

(15) The term ''significant equity percentage'' means—

(A) a level of contribution and participation sufficient, when compared to the other non-Federal participants in the partnership or other cooperative arrangement involved, to demonstrate a comparable long-term financial commitment to the product or process development involved; and

(B) any other criteria the Secretary may consider necessary to ensure an appropriate equity mix among the participants.

(16) The term ''person of a foreign country'' has the meaning given such term in section 3502(d) of the Primary Dealers Act of 1988 (22 U.S.C. 5342(d)).

(Added Pub. L. 102–484, div. D, title XLII, § 4203(a), Oct. 23, 1992, 106 Stat. 2661; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(9), title XIII, § 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; Pub. L. 103–337, div. A, title XI, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former sections 2511 and 2521 of this title prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1994—Par. (5). Pub. L. 103–337, § 1113(d), inserted before period at end '', except that such terms include a federally funded research and development center sponsored by a Federal agency''.

Par. (16). Pub. L. 103–337, § 1115(e), added par. (16).

1993—Par. (2). Pub. L. 103–160, § 1182(a)(9)(A), substituted ''nonmilitary applications'' for ''nonmilitary application''.

Par. (8). Pub. L. 103–160, § 1182(a)(9)(B), substituted ''subsection (b)(4)'' for ''subsection (f)''.

Pars. (13) to (15). Pub. L. 103–160, § 1315(f), added pars. (13) to (15).

SHORT TITLE OF 1994 AMENDMENT

Section 1101 of title XI of div. A of Pub. L. 103–337 provided that: ''This title [enacting sections 2519 and 2520 of this title, amending this section, sections 1151, 1152, 2391, 2511 to 2513, and 2524 of this title, and sections 1662d and 1662d–1 of Title 29, Labor, and enacting and amending provisions set out as notes under section 2501 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Section 1301 of title XIII of div. A of Pub. L. 103–160 provided that: ''This title [enacting sections 1152 and 1153 of this title and sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending this section, sections 1142, 1151, 1598, 2410j, 2501, 2502, 2511 to 2513, 2523, and 2524 of this title, sections 1551 and 1662d–1 of Title 29, Labor, section 31326 of Title 46, and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, repealing section 2504 of this title, enacting provisions set out as notes under sections 1143, 1151, 2501, 2511, 2701, and 5013 of this title, section 1662d–1 of Title 29, and sections 1279b and 1279d of the Appendix to Title 46, amending provisions set out as notes under sections 1143, 2391, and 2501 of this title, and repealing provisions set out as a note under section 2701 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993'.''

SHORT TITLE

Section 4001 of Pub. L. 102–484 provided that: ''This division [div. D (§§ 4001–4501) of Pub. L. 102–484, see Tables for classification] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Act of 1992'.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(f) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

CONGRESSIONAL FINDINGS

Section 4101 of Pub. L. 102–484 provided that: ''Congress makes the following findings:

''(1) The collapse of communism in Eastern Europe and the dissolution of the Soviet Union have fundamentally changed the military threat that formed the basis for the national security policy of the United States since the end of World War II.

''(2) The change in the military threat presents a unique opportunity to restructure and reduce the military requirements of the United States.

''(3) As the United States proceeds with the post-Cold War defense build down, the Nation must recognize and address the impact of reduced defense spending on the military personnel, civilian employees, and defense industry workers who have been the foundation of the national defense policies of the United States.

''(4) The defense build down will have a significant impact on communities as procurements are reduced and military installations are closed and realigned.

''(5) Despite the changes in the military threat, the United States must maintain the capability to respond to regional conflicts that threaten the national interests of the United States, and to reconstitute forces in the event of an extended conflict.

''(6) The skills and capabilities of military personnel, civilian employees of the Department of Defense, defense industry workers, and defense industries represent an invaluable national resource that can contribute to the economic growth of the United States and to the long-term vitality of the national technology and industrial base.

''(7) Prompt and vigorous implementation of defense conversion, reinvestment, and transition assistance programs is essential to ensure that the defense build down is structured in a manner that—

''(A) enhances the long-term ability of the United States to maintain a strong and vibrant national technology and industrial base; and

''(B) promotes economic growth.''

PURPOSES OF TITLE XLII OF PUB. L. 102–484

Section 4201 of title XLII of div. D of Pub. L. 102–484 provided that: ''The purposes of this title [see Tables for classification] are to consolidate, revise, clarify, and reenact policies and requirements, and to enact additional policies and requirements, relating to the national technology and industrial base, defense reinvestment, and defense conversion programs that further national security objectives.''

TRANSITION PROVISION; ''DEFENSE CRITICAL TECHNOLOGY'' DEFINED

Section 4203(b) of Pub. L. 102–484 provided that: ''Until the first national technology and industrial base assessment is submitted to Congress by the Secretary of Defense pursuant to section 2506(e) of title 10, United States Code, as added by section 4216, the term 'defense critical technology' for the purposes of chapter 148 of such title, as added by section 4202, shall have the meaning given such term in section 2521 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act [Oct. 23, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2534 of this title.

SUBCHAPTER II—POLICIES AND PLANNING

Sec.
2501. Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion.
2502. National Defense Technology and Industrial Base Council.
2503. National defense program for analysis of the technology and industrial base.
[2504. Repealed.]
2505. National technology and industrial base: periodic defense capability assessments.
2506. National technology and industrial base: periodic defense capability plan.
2507. Data collection authority of President.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XIII, § 1312(a)(2), Nov. 30, 1993, 107 Stat. 1786, struck out item 2504 ''Center for the Study of Defense Economic Adjustment''.

§ 2501. Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion

(a) DEFENSE POLICY OBJECTIVES FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—It is the policy of Congress that the national technology and industrial base be capable of meeting the following national security objectives:

(1) Supplying and equipping the force structure of the armed forces that is necessary to achieve—

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, and logistics for military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop and produce supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

(5) Furthering the missions of the Department of Defense through the support of policy objectives and programs relating to the defense reinvestment, diversification, and conversion objectives specified in subsection (b).

(b) POLICY OBJECTIVES RELATING TO DEFENSE REINVESTMENT, DIVERSIFICATION, AND CONVERSION.—It is the policy of Congress that, during a period of reduction in defense expenditures, the United States further the national security objectives set forth in subsection (a) through programs of reinvestment, diversification, and conversion of defense resources that—

(1) promote economic growth in high-wage, high-technology industries and preserve the industrial and technical skill base;

(2) promote economic growth through further reduction of the Federal budget deficit that, by reducing the public sector demand for capital, increases the amount of capital available for private investment and job creation in the civilian sector;

(3) bolster the national technology base, including support and exploitation of critical technologies with both military and civilian application;

(4) support retraining of separated military, defense civilian, and defense industrial personnel for jobs in activities important to national economic growth and security;

(5) assist those activities being undertaken at the State and local levels to support defense economic reinvestment, conversion, adjustment, and diversification activities; and

(6) assist small businesses adversely affected by reductions in defense expenditures.

(c) CIVIL-MILITARY INTEGRATION POLICY.—It is the policy of Congress that the United States attain the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(Added Pub. L. 102–484, div. D, title XLII, § 4211, Oct. 23, 1992, 106 Stat. 2662; amended Pub. L. 103–35, title II, § 201(c)(7), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title XI, § 1182(a)(10), title XIII, § 1313, Nov. 30, 1993, 107 Stat. 1771, 1786.)

PRIOR PROVISIONS

A prior section 2501, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2014, related to centralized guidance, analysis, and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2501 was renumbered section 2533 of this title.

AMENDMENTS

1993—Subsec. (a)(1)(A). Pub. L. 103–35 substituted ''section 108'' for ''section 104''.

Subsec. (a)(5). Pub. L. 103–160, § 1313, added par. (5).

Subsec. (b)(2). Pub. L. 103–160, § 1182(a)(10), substituted ''that, by reducing the public sector demand for capital, increases the amount of capital available'' for ''and thereby free up capital''.

DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS

Pub. L. 103–337, div. A, title XI, § 1118, Oct. 5, 1994, 108 Stat. 2870, provided that: ''At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 2501(a) of such title or a particular policy objective set forth in section 2501(b) of such title.''

REPORTS ON DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE PROGRAMS

Section 1303 of Pub. L. 103–160 provided that:

''(a) REPORT REQUIRED.—During each of the fiscal years 1994, 1995, and 1996, the Secretary of Defense shall prepare a report that assesses the effectiveness of all defense conversion, reinvestment, and transition assistance programs (as defined in section 1302 [107 Stat. 1783]) during the preceding fiscal year.

''(b) CONTENTS OF REPORT.—To the maximum extent practicable, each report required under subsection (a) shall include an assessment of each of the following:

''(1) The status of the obligation of appropriated funds for each defense conversion, reinvestment, and transition assistance program.

''(2) With respect to each component of the dual-use partnership program element specified in paragraphs (1) through (10) of section 1311(b) [107 Stat. 1785]—

''(A) the extent to which the component meets the objectives set forth in section 2501 of title 10, United States Code;

''(B) the technology benefits of the component to the national technology and industrial base;

''(C) any evidence of commercialization of technologies developed under the component;

''(D) the extent to which the investments under the component have affected levels of employment;

''(E) the number of defense firms participating in cooperative agreements or other arrangements under the component;

''(F) the extent to which matching fund requirements of the component were met by cash contributions by the non-Federal Government participants;

''(G) the extent to which defense technology reinvestment projects under the component have met milestones and financial and technical requirements;

''(H) the extent to which the component is integrated with technology programs conducted by other Federal agencies; and

''(I) the number of proposals under the component that were received from small business concerns and the number of awards made to small business concerns.

''(3) With respect to each personnel assistance program conducted under subtitle C of this title [subtitle C, §§ 1331–1339 of title XIII of div. A of Pub. L. 103–160, enacting sections 1152 and 1153 of this title, amending sections 1142, 1151, 1598, and 2410j of this title and sections 1551 and 1662d–1 of Title 29, Labor, enacting provisions set out as notes under sections 1143, 1151, and 2701 of this title, repealing provisions set out as a note under section 2701 of this title, and amending provisions set out as a note under section 1143 of this title], title XLIV of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2701) [see Tables for classification], and the amendments made by that subtitle or title—

''(A) the extent to which the program meets the objectives set forth in section 2501(b) of title 10, United States Code;

''(B) the number of individuals eligible for transition assistance under the program;

''(C) the number of individuals directly receiving transition assistance under the program and the projected number of individuals who will directly receive transition assistance;

''(D) in the case of a job training program, an estimate of the number of individuals who have secured permanent employment as a result of participation in the program; and

''(E) the extent to which the transition assistance activities under the program duplicated other transition assistance provided or administered outside the Department of Defense.

''(c) SUBMISSION OF REPORT.—The report required under subsection (a) for a particular fiscal year shall be submitted to Congress at the same time that the Secretary of Defense submits the annual report required under section 113(c) of title 10, United States Code, for that fiscal year.''

NATIONAL SHIPBUILDING INITIATIVE

Sections 1351 to 1354 of Pub. L. 103–160 provided that:

''SEC. 1351. SHORT TITLE.

''This subtitle [subtitle D, §§1351–1363 of title XIII of div. A of Pub. L. 103–160, enacting sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending section 31326 of Title 46 and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, and enacting provisions set out as notes under sections 1279b and 1279d of the Appendix to Title 46] may be cited as the 'National Shipbuilding and Shipyard Conversion Act of 1993'.

''SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

''(a) ESTABLISHMENT OF PROGRAM.—There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

''(b) ADMINISTERING DEPARTMENTS.—The program shall be carried out—

''(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

''(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

''(c) PROGRAM ELEMENTS.—The National Shipbuilding Initiative shall consist of the following program elements:

''(1) FINANCIAL INCENTIVES PROGRAM.—A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

''(2) TECHNOLOGY DEVELOPMENT PROGRAM.—A technology development program, to be carried out within the Department of Defense by the Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

''(3) NAVY'S AFFORDABILITY THROUGH COMMONALITY PROGRAM.—Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

''(4) NAVY'S MANUFACTURING TECHNOLOGY AND TECHNOLOGY BASE PROGRAMS.—Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

''SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH ADVANCED RESEARCH PROJECTS AGENCY.

''The Secretary of Defense shall designate the Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

''SEC. 1354. ADVANCED RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

''(a) ARPA FUNCTIONS.—The Secretary of Defense, acting through the Director of the Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

''(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

''(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

''(B) assessments of potential markets for maritime products; and

''(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short- and long-term manufacturing technology investment strategies.

''(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

''(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

''(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

''(b) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—

''(1) MAXIMUM DEPARTMENT OF DEFENSE SHARE.—The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

''(2) REGULATIONS.—The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.''

ARMAMENT RETOOLING AND MANUFACTURING SUPPORT INITIATIVE

Subtitle H of title I of div. A of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, §202(a)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–337, div. A, title XI, §1141(a), (b), Oct. 5, 1994, 108 Stat. 2879, provided that:

''SEC. 191. SHORT TITLE.

''This subtitle may be cited as the 'Armament Retooling and Manufacturing Support Act of 1992'.

''SEC. 192. POLICY.

''It is the policy of the United States—

''(1) to encourage, to the maximum extent practicable, nondefense commercial firms to use Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army;

''(2) to use such facilities for supporting programs, projects, policies, and initiatives that promote competition in the private sector of the United States economy and that advance United States interests in the global marketplace;

''(3) to increase the manufacture of products inside the United States that, to a significant extent, are manufactured outside the United States;

''(4) to support policies and programs that provide manufacturers with incentives to assist the United States in making more efficient and economical use of Government-owned industrial plants and equipment for commercial purposes;

''(5) to provide, as appropriate, small businesses (including socially and economically disadvantaged small business concerns and new small businesses) with incentives that encourage those businesses to undertake manufacturing and other industrial processing activities that contribute to the prosperity of the United States;

''(6) to encourage the creation of jobs through increased investment in the private sector of the United States economy;

''(7) to foster a more efficient, cost-effective, and adaptable armaments industry in the United States;

''(8) to achieve, with respect to armaments manufacturing capacity, an optimum level of readiness of the defense industrial base of the United States that is consistent with the projected threats to the national security of the United States and the projected emergency requirements of the Armed Forces of the United States; and

''(9) to encourage facility contracting where feasible.

''SEC. 193. ARMAMENT RETOOLING AND MANUFACTURING SUPPORT INITIATIVE.

''(a) AUTHORITY FOR INITIATIVE.—During fiscal years 1993 through 1996, the Secretary of the Army may carry out a program to be known as the 'Armament Retooling and Manufacturing Support Initiative' (hereinafter in this subtitle referred to as the 'ARMS Initiative').

''(b) PURPOSES.—The purposes of the ARMS Initiative are as follows:

''(1) To encourage commercial firms, to the maximum extent practicable, to use Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army for commercial purposes.

''(2) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use such facilities for those purposes.

''(3) To reduce the adverse effects of reduced Department of the Army spending that are experienced by States and communities by providing for such facilities to be used for commercial purposes that create jobs and promote prosperity.

''(4) To provide for the reemployment and retraining of skilled workers who, as a result of the closing of such facilities, are idled or underemployed.

''(5) To contribute to the attainment of economic stability in economically depressed regions of the United States where there are Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army.

''(6) To maintain in the United States a work force having the skills in manufacturing processes that are necessary to meet industrial emergency planned requirements for national security purposes.

''(7) To be a model for future defense conversion initiatives.

''(8) To the maximum extent practicable, to allow the operation of Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army to be rapidly responsive to the forces of free market competition.

''(9) Through the use of Government-owned, contractor-operated ammunition manufacturing facilities for commercial purposes, to encourage relocation of industrial production to the United States from outside the United States.

''(c) AVAILABILITY OF FACILITIES.—The Secretary of the Army may make the Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army available for the purposes of the ARMS Initiative.

''SEC. 194. FACILITIES CONTRACTS.

''(a) IN GENERAL.—In the case of each Government-owned, contractor-operated ammunition manufacturing facility of the Department of the Army that is made available for the ARMS Initiative, the Secretary of the Army may, by contract, authorize the facility contractor—

''(1) to use the facility for one or more years consistent with the purposes of the ARMS Initiative; and

''(2) to enter into multiyear subcontracts for the commercial use of the facility consistent with such purposes.

''(b) FACILITY CONTRACTOR DEFINED.—For purposes of subsection (a), the term 'facility contractor', with respect to a Government-owned, contractor-operated ammunition manufacturing facility of the Department of the Army, means a contractor that, under a contract with the Secretary of the Army—

''(1) is authorized to manufacture ammunition or any component of ammunition at the facility; and

''(2) is responsible for the overall operation and maintenance of the facility for meeting planned requirements in the event of an industrial emergency.

''SEC. 195. ARMS INITIATIVE LOAN GUARANTEE PROGRAM.

''(a) PROGRAM AUTHORIZED.—Subject to subsection (b), the Secretary of the Army may carry out a loan guarantee program to encourage commercial firms to use ammunition manufacturing facilities pursuant to section 193. Under such program, the Secretary may guarantee the repayment of any loan made to a commercial firm to fund, in whole or in part, the establishment of a commercial activity under this subtitle.

''(b) ADVANCED BUDGET AUTHORITY.—Loan guarantees under this section may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required by section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

''(c) PROGRAM ADMINISTRATION.—(1) The Secretary may enter into agreements with the Administrator of the Small Business Administration or the Administrator of the Farmers Home Administration, the Administrator of the Rural Development Administration, or the head of other appropriate agencies of the Department of Agriculture, under which such Administrators may, under this section—

''(A) process applications for loan guarantees;

''(B) guarantee repayment of loans; and

''(C) provide any other services to the Secretary to administer the loan guarantee program.

''(2) Each Administrator may guarantee loans under this section to commercial firms of any size, notwithstanding any limitations on the size of applicants imposed on other loan guarantee programs that the Administrator administers.

''(3) To the extent practicable, each Administrator shall use the same procedures for processing loan guarantee applications under this section as the Administrator uses for processing loan guarantee applications under other loan guarantee programs that the Administrator administers.

''(d) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed—

''(1) $20,000,000, with respect to any single borrower; and

''(2) $320,000,000 with respect to all borrowers.

''(e) TRANSFER OF FUNDS.—The Secretary of the Army may transfer to an Administrator providing services under subsection (c), and the Administrator may accept, such funds as may be necessary to administer the loan guarantee program under this section.

''(f) REPORTING REQUIREMENT.—Not later than July 1 of each year in which a guarantee issued under this section is in effect, the Secretary shall submit to the congressional defense committees a report specifying the amounts of loans guaranteed under this section during the preceding calendar year. No report is required after fiscal year 1997.

''SEC. 196. REPORTING REQUIREMENT.

''Not later than July 1, 1993, the Secretary of the Army shall submit to the congressional defense committees a report on the ARMS Initiative. The report shall contain—

''(1) a comprehensive review of contracting of Government-owned, contractor-operated ammunition manufacturing facilities, under the ARMS Initiative; and

''(2) any recommendations the Secretary may have for changes to the ARMS Initiative.''

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

Section 4218 of Pub. L. 102–484 provided that:

''(a) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall prescribe regulations, including milestones for actions, to ensure the timely and thorough collection of information, completion of assessments, and issuance of plans to be accomplished by the Secretary of Defense that are required by the provisions of subchapter II of chapter 148 [of title 10]. Such regulations shall be prescribed in consultation with the other heads of departments comprising the National Defense Technology and Industrial Base Council.

''(b) FIRST ASSESSMENT AND PLAN.—(1) The first assessment required by section 2505 of title 10, United States Code, as added by section 4215, shall be completed not later than September 30, 1993.

''(2) The first plan required by section 2506 of such title, as added by section 4216, shall be completed not later than December 1, 1993.

''(3) The Secretary may prescribe regulations authorizing the presentation of information in a preliminary form in the first periodic assessment and the first periodic plan to the extent that the necessary information cannot reasonably be collected, analyzed, or presented in accordance with section 2505 or 2506, respectively, of title 10, United States Code, by the dates specified in paragraphs (1) and (2).

''(c) TEXTILES.—The periodic national technology and industrial base assessment submitted to Congress pursuant to section 2506(e) of title 10, United States Code, shall include, through 1995, a specific assessment of the capability of the domestic textile and apparel industrial base of the United States to support national defense mobilization requirements. Each such assessment shall include the following:

''(1) An identification of textile and apparel mobilization requirements of the Department of Defense that cannot be satisfied on a timely basis by domestic industries.

''(2) An assessment of the effect that any inadequacy in the textile and apparel industrial base would have on a mobilization.

''(3) Recommendations for ways to alleviate any such inadequacy that the Secretary considers critical to national defense mobilization requirements.''

INDUSTRIAL DIVERSIFICATION PLANNING FOR DEFENSE CONTRACTORS

Section 4239 of Pub. L. 102–484 provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall prescribe regulations to encourage defense contractors to engage in industrial diversification planning.''

NOTICE TO CONTRACTORS AND EMPLOYEES UPON PROPOSED AND ACTUAL TERMINATION OR SUBSTANTIAL REDUCTION IN MAJOR DEFENSE PROGRAMS

Section 4471 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title XIII, § 1372, Nov. 20, 1993, 107 Stat. 1817; Pub. L. 103–337, div. A, title XI, § 1142, Oct. 5, 1994, 108 Stat. 2881, provided that:

''(a) NOTICE REQUIREMENT AFTER SUBMISSION OF PRESIDENT'S BUDGET TO CONGRESS.—Each year, in conjunction with the preparation of the budget for the next fiscal year to be submitted to Congress under section 1105 of title 31, United States Code, the Secretary of Defense shall determine which major defense programs (if any) are proposed to be terminated or substantially reduced under the budget. Not later than 60 days after the date on which the budget is submitted to Congress under such section, the Secretary, in accordance with regulations prescribed by the Secretary, shall provide notice of the proposed termination of, or substantial reduction in, each such program—

''(1) directly to each prime contractor under that program; and

''(2) by general notice through publication in the Federal Register.

''(b) NOTICE REQUIREMENT AFTER ENACTMENT OF APPROPRIATIONS ACT.—Each year, not later than 60 days after the date of the enactment of an Act appropriating funds for the military functions of the Department of Defense, the Secretary of Defense, in accordance with regulations prescribed by the Secretary—

''(1) shall determine which major defense programs (if any) of the Department of Defense that were not previously identified under subsection (a) are likely to be terminated or substantially reduced as a result of the funding levels provided in that Act; and

''(2) shall provide notice of the anticipated termination of, or substantial reduction in, that program—

''(A) directly to each prime contractor under that program;

''(B) directly to the Secretary of Labor; and

''(C) by general notice through publication in the Federal Register.

''(c) NOTICE TO SUBCONTRACTORS.—As soon as reasonably practicable after the date on which the prime contractor for a major defense program receives notice under subsection (a) or (b) of the termination of, or substantial reduction in, that program, and not more than 45 days after such date, the prime contractor shall—

''(1) provide notice of that termination or substantial reduction to each person that is a first-tier subcontractor for that program under a contract in an amount not less than $500,000 for the program; and

''(2) require that each such subcontractor—

''(A) provide such notice to each of its subcontractors for the program under a contract in an amount in excess of $100,000; and

''(B) impose a similar notice and pass through requirement to subcontractors in an amount in excess of $100,000 at all tiers.

''(d) CONTRACTOR NOTICE TO EMPLOYEES AND STATE DISLOCATED WORKER UNIT.—Not later than two weeks after a defense contractor receives notice under subsection (a)(1) or (b)(1), as the case may be, of the termination of, or substantial reduction in, a defense program, the contractor shall provide notice of such termination or substantial reduction to—

''(1)(A) each representative of employees whose work is directly related to the defense contract under such program and who are employed by the defense contractor; or

''(B) if there is no such representative at that time, each such employee; and

''(2) the State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)) and the chief elected official of the unit of general local government within which the adverse effect may occur.

''(e) CONSTRUCTIVE NOTICE.—The notice of termination of, or substantial reduction in, a major defense program provided under subsection (d)(1) to an employee of a contractor shall have the same effect as a notice of termination to such employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d–1), except where the employer has specified that the termination of, or substantial reduction in, the program is not likely to result in plant closure or mass layoff. Any employee considered to have received such notice under the preceding sentence shall only be eligible to receive services under section 314(b) of such Act (29 U.S.C. 1661c(b)) and under paragraphs (1) through (14), (16), and (18) of section 314(c) of such Act (29 U.S.C. 1661c(c)).

''(f) WITHDRAWAL OF NOTIFICATION UPON SUFFICIENT FUNDING FOR PROGRAM TO CONTINUE.—

''(1) NOTICE TO PRIME CONTRACTOR.—If the Secretary of Defense provides a notification under subsection (a) for a fiscal year with respect to a major defense program and the Secretary subsequently determines, upon enactment of an Act appropriating funds for the military functions of the Department of Defense for that fiscal year that due to a sufficient level of funding for the program having been provided in that Act there will not be a termination of, or substantial reduction in, that program, then the Secretary shall provide notice of withdrawal of the notification provided under subsection (a) to each prime contractor that received that notice under such subsection. Any such notice of withdrawal shall be provided not later than 60 days after the date of the enactment of the appropriations Act concerned. In any such case, the Secretary shall at the same time provide general notice of such withdrawal by publication in the Federal Register.

''(2) NOTICE TO SUBCONTRACTORS.—As soon as reasonably practicable after the date on which the prime contractor for a major defense program receives notice under paragraph (1) of the withdrawal of a notification previously provided to the contractor under subsection (a), and not more than 45 days after that date, the prime contractor shall provide notice of such withdrawal to each person that is a first-tier subcontractor for the program under a contract in an amount not less than $500,000 for the program and shall require that each such subcontractor provide such notice to each subcontractor for the program under a contract in an amount not less than $100,000 at any tier.

''(3) NOTICE TO EMPLOYEES.—As soon as reasonably practicable after the date on which a prime contractor receives notice of withdrawal under paragraph (1) or a subcontractor receives such a notice under paragraph (2), and not more than two weeks after that date, the contractor or subcontractor shall provide notice of such withdrawal—

''(A) to each representative of employees whose work is directly related to the defense contract under the program and who are employed by the contractor or subcontractor or, if there is no such representative at that time, each such employee;

''(B) to the State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)) and the chief elected official of the unit of general local government within which the adverse effect may occur; and

''(C) to each grantee under section 325(a) or 325A(a) of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d–1) providing training, adjustment assistance, and employment services to an employee described in this paragraph.

''(4) LOSS OF ELIGIBILITY.—An employee who receives a notice of withdrawal under paragraph (3) shall not be eligible for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d–1) beginning on the date on which the employee receives the notice.

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

''(1) The term 'major defense program' means a program that is carried out to produce or acquire a major system (as defined in section 2302(5) of title 10, United States Code).

''(2) The terms 'substantial reduction' and 'substantially reduced', with respect to a major defense program, mean a reduction of 25 percent or more in the total dollar value of contracts under the program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2502, 2505, 2506, 2511, 2512, 2513, 2514, 2515, 2516, 2519, 2520, 2522, 2523, 2524, 2525 of this title.

§ 2502. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

(b) COMPOSITION.—The Council is composed of the following members:

(1) The Secretary of Defense, who shall serve as chairman.

(2) The Secretary of Energy.

(3) The Secretary of Commerce.

(4) The Secretary of Labor.

(5) Such other officials as may be determined by the President.

(c) RESPONSIBILITIES.—The Council shall have the following responsibilities:

(1) To ensure effective cooperation among departments and agencies of the Federal Government, and to provide advice and recommendations to the President, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor, concerning—

(A) the capabilities of the national technology and industrial base to meet the national security objectives set forth in section 2501(a) of this title;

(B) programs for achieving, during a period of reduction in defense expenditures, the defense reinvestment, diversification, and conversion objectives set forth in section 2501(b) of this title; and

(C) changes in acquisition policy that strengthen the national technology and industrial base.

(2) To provide overall policy guidance to ensure effective implementation by agencies of the Federal Government of defense reinvestment and conversion activities during a period of reduction in defense expenditures.

(3) To prepare the periodic assessment and the periodic plan required by sections 2505 and 2506 of this title, respectively.

(d) ALTERNATIVE PERFORMANCE OF RESPONSIBILITIES.—Notwithstanding subsection (c), the President may assign the responsibilities of the Council to another interagency organization of the executive branch that includes among its members the officials specified in paragraphs (1) through (4) of subsection (b).

(Added Pub. L. 102–484, div. D, title XLII, § 4212(a), Oct. 23, 1992, 106 Stat. 2664; amended Pub. L. 103–160, div. A, title XIII, § 1312(b), Nov. 30, 1993, 107 Stat. 1786; Pub. L. 103–337, div. A, title X, § 1070(a)(12), Oct. 5, 1994, 108 Stat. 2856.)

PRIOR PROVISIONS

A prior section 2502, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2015, related to defense industrial base policies, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2502 was renumbered section 2534 of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337 substituted ''executive'' for ''Executive''.

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

§ 2503. National defense program for analysis of the technology and industrial base

(a) ESTABLISHMENT.—(1) The Secretary of Defense, in consultation with the National Defense Technology and Industrial Base Council, shall establish a program for analysis of the national technology and industrial base.

(2) As determined by the Secretary of Defense, the program shall be administered by one of the following:

(A) An existing federally funded research and development center.

(B) A consortium of existing federally funded research and development centers and other nonprofit entities.

(C) A private sector entity (other than a federally funded research and development center).

(D) The National Defense University.

(3) A contract may be awarded under subparagraph (A), (B), or (C) of paragraph (2) only through the use of competitive procedures.

(4) The Secretary of Defense shall ensure that there is appropriate coordination between the program and the Critical Technologies Institute.

(b) SUPERVISION OF PROGRAM.—The Secretary of Defense shall carry out the program through the Under Secretary of Defense for Acquisition. In carrying out the program, the Under Secretary shall consult with the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor.

(c) FUNCTIONS.—The functions of the program shall include, with respect to the national technology and industrial base, the following:

(1) The assembly of timely and authoritative information.

(2) Initiation of studies and analyses.

(3) Provision of technical support and assistance to—

(A) the National Defense Technology and Industrial Base Council in the preparation of the periodic assessments required by section 2505 of this title and the periodic plans required by section 2506 of this title;

(B) the defense acquisition university structure and its elements; and

(C) other departments and agencies of the Federal Government in accordance with guidance established by the Council.

(4) Dissemination, through the National Technical Information Service of the Department of Commerce, of unclassified information and assessments for further dissemination within the Federal Government and to the private sector.

(Added Pub. L. 102–484, div. D, title XLII, § 4213(a), Oct. 23, 1992, 106 Stat. 2665.)

PRIOR PROVISIONS

A prior section 2503, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2016; amended Pub. L. 101–189, div. A, title VIII, § 842(a), (b), Nov. 29, 1989, 103 Stat. 1514, 1515; Pub. L. 102–25, title VII, § 701(f)(4), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–484, div. A, title X, § 1052(32), Oct. 23, 1992, 106 Stat. 2501, established defense industrial base office, prior to repeal by Pub. L. 102–484, § 4202(a).

DEADLINE FOR ESTABLISHING PROGRAM

Section 4213(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall establish the program required by section 2503 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Oct. 23, 1992]. The Secretary of Defense shall ensure that a contract solicitation is issued and a contract is awarded in a timely manner to facilitate the establishment of that program within the period set forth in the preceding sentence. The preceding sentence shall not apply if the Secretary determines that the program shall be administered by the National Defense University.''

[§ 2504. Repealed. Pub. L. 103–160, div. A, title XIII, § 1312(a)(1), Nov. 30, 1993, 107 Stat. 1786]

Section, added Pub. L. 102–484, div. D, title XLII, § 4214(a), Oct. 23, 1992, 106 Stat. 2666, established Center for Study of Defense Economic Adjustment.

A prior section 2504 was renumbered section 2531 of this title.

§ 2505. National technology and industrial base: periodic defense capability assessments

(a) COMPREHENSIVE ASSESSMENT.—The National Defense Technology and Industrial Base Council shall, on a regular and periodic basis and not less often than annually through fiscal year 1997 and biennially thereafter, prepare a comprehensive assessment of the capability of the national technology and industrial base to attain each of the national security objectives set forth in section 2501(a) of this title.

(b) TECHNOLOGY AND INDUSTRIAL BASE SECTOR CAPABILITY ANALYSIS.—Each assessment under subsection (a) shall include the following:

(1) An analysis of the role, capability, and continued economic viability of those technology and industrial base sectors that are critical to attaining each of the objectives set forth in section 2501(a) of this title.

(2) An analysis of the present and projected financial condition of each technology and industrial base sector.

(3) An analysis of the impact of the terminations and significant reductions of major research and development programs and procurement programs of the Department of Defense on the capability of those technology and industrial base sectors that are critical to attaining each of the national security objectives set forth in section 2501(a) of this title during a period of reduction in defense expenditures.

(4) A critical technology analysis that identifies the product and process technologies

that are most critical for attaining the national security objectives set forth in section 2501(a) of this title.

(c) FOREIGN DEPENDENCY CONSIDERATIONS.—In the preparation of the periodic assessment, the Council shall include considerations of foreign dependency.

(d) ISSUANCE.—The Secretary of Defense shall prescribe by regulation a schedule for the completion of the periodic assessment that ensures sufficient time for the consideration of the assessment in the preparation of the periodic national technology and industrial base plan required by section 2506 of this title.

(Added Pub. L. 102–484, div. D, title XLII, §4215, Oct. 23, 1992, 106 Stat. 2667; amended Pub. L. 103–35, title II, §201(g)(7), May 31, 1993, 107 Stat. 100.)

PRIOR PROVISIONS

A prior section 2505 was renumbered section 2532 of this title.

AMENDMENTS

1993—Pub. L. 103–35 substituted ''capability'' for ''capabilty'' in section catchline.

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

For provisions relating to first assessment required by this section, see section 4218 of Pub. L. 102–484, set out as a note under section 2501 of this title.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC ASSESSMENT

Section 4219 of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, §202(a)(14), May 31, 1993, 107 Stat. 101, provided that:

''(a) RULE OF CONSTRUCTION.—Except as otherwise expressly provided, in this section each reference to a section is a reference to a section of title 10, United States Code.

''(b) INITIAL REGULATIONS.—The Secretary of Defense shall ensure that the initial regulations prescribed to implement section 2505 provide that the periodic assessment required by such section address the matters set forth in this section.

''(c) SECTOR ROLE ANALYSIS.—The initial regulations shall provide that the analysis required by section 2505(b)(1), concerning the role and capability of each technology and industrial base sector in furthering each of the national security objectives of section 2501(a), include the following:

''(1) An analysis of the current and projected capability of each sector to attain each such objective for each of the following periods:

''(A) The fiscal year during which the assessment is submitted to Congress pursuant to section 2506(e).

''(B) The following fiscal year.

''(C) The multiyear period covered by the future-years defense program submitted under section 221 during the fiscal year referred to in subparagraph (A).

''(2) For each period described in paragraph (1), an analysis of the present and projected capabilities of prime contractors, subcontractors, the Defense Industrial Reserve, and departments and agencies of the Federal Government with respect to each of the following:

''(A) Research and development, including research and development regarding the critical technologies identified in the analysis pursuant to section 2505(b)(4).

''(B) Application of critical technologies to the production of goods and the furnishing of services.

''(C) Test and evaluation.

''(D) Low rate production.

''(E) High volume production.

''(F) Repair and maintenance.

''(G) Design and prototyping.

''(H) Workforce skills and capabilities, including improvements that build on the skill and experience of the workforce.

''(d) FINANCIAL CAPABILITY ANALYSIS.—The initial regulations shall provide that the analysis required by section 2505(b)(2), concerning the present and projected financial capability of each technology and industrial base sector, specifically consider the following matters:

''(1) Trends in the following:

''(A) Profitability.

''(B) Levels of capital investment.

''(C) Expenditures on research and development.

''(D) Levels of debt.

''(2) The effects of actual and potential commercial sales.

''(3) The consequences of mergers, acquisitions, and takeovers.

''(4) The effects of Department of Defense financial policies, including the following:

''(A) Policies relating to progress payments or other financing by the Department of Defense.

''(B) Policies relating to the return on contractor investment.

''(C) Policies relating to the allocation of contract risk between the Department of Defense and a contractor.

''(5) The effects of expenditures in the technology and industrial base sector by departments and agencies of the Federal Government other than the Department of Defense and the Department of Energy (for national security programs).

''(6) The analysis required by section 2505(b)(3).

''(e) ANALYSIS OF IMPACT OF DEPARTMENT OF DEFENSE REDUCTIONS.—The initial regulations shall provide that, in the periodic assessment, the analysis required by section 2505(b)(3), concerning the impact of terminations and significant reductions of programs referred to in such section on the capability of each technology and industrial base sector to further each of the national security objectives set forth in section 2501(a), specifically consider the impact of the terminations and significant reductions that—

''(1) have taken place in the fiscal year before the fiscal year in which such periodic assessment is submitted to Congress pursuant to section 2506(e); or

''(2) are provided for—

''(A) in the budget submitted to Congress by the President in that fiscal year; and

''(B) in the future-years defense program submitted with such budget.

''(f) CRITICAL TECHNOLOGY ANALYSIS.—The initial regulations shall provide, with respect to the critical technology analysis required by section 2505(b)(4), the following:

''(1) That the number of technologies so identified not exceed 20.

''(2) That the analysis be prepared in consultation with the Critical Technologies Institute.

''(3) That, for each technology, the analysis include the following:

''(A) The reasons for selection of that technology as a technology critical to the Department of Defense.

''(B) The potential dual-use applications of that technology.

''(C) The relationship between the activities of the Department of Defense and other Federal agencies in the development of that technology.

''(D) The potential contributions that the private sector can be expected to make from its own resources in connection with the development of civilian applications for such technology.

''(E) A comparison of the position of the United States to the positions of other nations in the development of that technology, including the poten-

tial contributions that other nations can make to meeting the needs of the United States for that technology.

''(g) ECONOMIC VIABILITY ANALYSIS.—(1) The initial regulations shall provide that the economic viability analysis required by section 2505(b)(5) include, for each of the periods described in subsection (c)(1) of this section, an analysis of the following matters:

''(A) The extent to which each technology and industrial base sector is—

''(i) dependent on defense expenditures to ensure continued viability;

''(ii) dependent on a mix of defense and nondefense Federal Government expenditures to ensure continued viability;

''(iii) dependent on a mix of Federal Government expenditures and other Federal Government programs to ensure continued viability; and

''(iv) sufficiently integrated with the commercial marketplace to ensure continued viability regardless of the level of Federal Government expenditures in the technology and industrial base sector.

''(B) The extent to which each technology and industrial base sector is capable of—

''(i) ongoing production with a present capability for high volume production;

''(ii) maintenance of a production base that can be converted to high volume production within a reasonable period of time; or

''(iii) reconstitution of a production base that can reinstate high volume production within a reasonable period of time.

''(2) The analysis shall specifically identify any technology and industrial base sectors and any entities within technology and industrial base sectors that should be considered for inclusion in the Defense Industrial Reserve.

''(h) FOREIGN DEPENDENCY CONSIDERATIONS.—The initial regulations shall provide that the foreign dependency considerations taken into account in the preparation of the periodic assessment pursuant to section 2505(c) include, for each technology and industrial base sector, the following factors:

''(1) The availability of essential raw materials, special alloys, composite materials, components, subsystems, production equipment, facilities, special tooling, and production test equipment for—

''(A) the sustained production of systems fully capable of meeting the performance objectives established for those systems;

''(B) the uninterrupted maintenance and repair of such systems; and

''(C) the sustained operation of such systems.

''(2) The identification of items specified in paragraph (1) that are available only from sources outside the national technology and industrial base.

''(3)(A) The availability of alternatives for obtaining such items from within the national technology and industrial base if such items become unavailable from sources outside the national technology and industrial base.

''(B) An analysis of any military vulnerability that could result from the lack of reasonable alternatives.

''(4) The effects on the national technology and industrial base that result from foreign acquisition of firms in the United States.

''(i) DEFINITIONS.—In this section:

''(1) The term 'continued viability' means the capability to attain the national security objectives set forth in section 2501(a).

''(2) The term 'defense expenditure' means an expenditure—

''(A) by the Department of Defense; or

''(B) by the Department of Energy for a national security program.

''(3) The term 'Defense Industrial Reserve' is the Defense Industrial Reserve established by section 2535.

''(4) The term 'future-years defense program' means the future-years defense program required by section 221.

''(5) The term 'national technology and industrial base' has the meaning given that term in section 2491.

''(6) The term 'periodic assessment' means the periodic assessment required by section 2505.

''(7) The term 'section 2501 objectives' means the objectives set forth in section 2501.

''(8) The term 'significant reduction', with respect to expenditures for a program for a fiscal year, means that the amount provided for that program for that fiscal year in the budget, Acts authorizing appropriations, appropriations Acts, or the future years defense program for that fiscal year is less than the amount provided for that program for the preceding fiscal year in the budget, Acts authorizing appropriations, appropriations Acts, or the future years defense program, respectively, for that preceding fiscal year by at least—

''(A) the greater of—

''(i) the amount equal to 10 percent of the amount provided for that preceding fiscal year; or

''(ii) $5,000,000; or

''(B) a lesser amount determined significant by the Secretary of Defense or the National Defense Technology and Industrial Base Council.

''(9) The term 'technology and industrial base sector' has the meaning given such term in section 2491.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2410g, 2491, 2502, 2503, 2506 of this title.

§ 2506. National technology and industrial base: periodic defense capability plan

(a) IN GENERAL.—The National Defense Technology and Industrial Base Council shall prepare annually through fiscal year 1997 and biennially thereafter a multiyear plan for ensuring, to the maximum extent practicable, that the policies and programs of the Department of Defense, the Department of Energy, and other departments and agencies of the Federal Government are planned, coordinated, funded, and implemented in a manner designed to attain each of the national security objectives set forth in section 2501(a) of this title. In preparing each plan, the Council shall take into account the most recent national technology and industrial base assessment prepared pursuant to section 2505 of this title.

(b) PROGRAM GUIDANCE TO BE INCLUDED IN PLAN.—Each plan under subsection (a) shall also provide specific guidance (including goals, milestones, and priorities) for the following:

(1) National defense programs and policies of the Department of Defense and Department of Energy that are necessary to ensure the continued viability of each technology and industrial base sector that is necessary to support the objectives stated in section 2501(a) of this title.

(2) National defense programs and policies of the Department of Defense and Department of Energy that are necessary in each such sector—

(A) to reduce dependence on foreign sources that could create a military vulnerability; and

(B) to provide for alternative sources in the event that the foreign sources become unavailable.

(3) The composition and management of the Defense Industrial Reserve under section 2535 of this title.

(4) National defense programs and policies of the Department of Defense and Department of Energy relating to manufacturing technology.

(5) Development of each defense critical technology.

(6) Ensuring that financial policies of the Department of Defense and Department of Energy (for national security programs) are designed to meet the policies set forth in section 2501 of this title.

(7) Encouragement of the effective use of commercial products and processes by the Department of Defense and the Department of Energy for national security programs.

(8) For each plan through fiscal year 1997, national defense programs and policies of the Department of Defense and Department of Energy relating to the transition from economic dependence on defense expenditures of those technology and industrial base sectors and businesses that are at least partially dependent economically on defense expenditures.

(9) Enhancement of the skills and capabilities of the work force in the national technology and industrial base in support of the national security objectives set forth in section 2501(a) of this title.

(10) Enhancement of the effectiveness of the major defense acquisition program regulations prescribed pursuant to section 2430(b) of this title.

(c) LONG-RANGE PLANS.—Each plan through fiscal year 1997 shall include the following:

(1) A long-range plan for technology development and use of model demonstration defense facilities for environmental restoration and waste management.

(2) A long-range plan to develop advanced technology to carry out transportation projects that further the national security objectives set forth in section 2501(a) of this title.

(3) A long-range national security energy technology plan to further the national security objectives of section 2501(a) of this title.

(4) A long-range national defense communications networking plan to further the national security objectives of section 2501(a) of this title.

(d) ACQUISITION REFORM GUIDANCE.—Each plan shall include—

(1) recommendations for legislation that the Council considers appropriate for eliminating any adverse effect of Federal law on the capability of the national technology and industrial base to further the national security objectives set forth in section 2501(a) of this title; and

(2) specific guidance to ensure that maximum use is made of authority to waive regulations or conduct test programs in pursuit of such objectives.

(e) ISSUANCE.—(1) The Secretary of Defense shall provide the plan to the Secretaries of the military departments and the heads of the other elements of the Department of Defense not later than the date on which the Secretary provides those officials with the guidance required by section 113(g)(1) of this title.

(2) The Secretary of Defense shall transmit to Congress, not later than March 31 of each year through 1997 and every odd-numbered year thereafter—

(A) the plan prepared under this section, including any changes necessary to reflect the budget submitted by the President during that year under section 1105 of title 31; and

(B) the national technology and industrial base periodic assessment prepared pursuant to section 2505 of this title that pertains to such plan and budget.

(3) The plan and assessment shall be submitted to Congress in classified and unclassified forms. Proprietary information that may be withheld from disclosure under section 552 of title 5 shall be provided only in the classified version.

(Added Pub. L. 102–484, div. D, title XLII, §4216(a), Oct. 23, 1992, 106 Stat. 2668.)

PRIOR PROVISIONS

A prior section 2506 was renumbered section 2533 of this title.

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

For provisions relating to first plan required by this section and to periodic national technology and industrial base assessment submitted to Congress pursuant to subsec. (e) of this section, see section 4218 of Pub. L. 102–484, set out as a note under section 2501 of this title.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC PLAN

Section 4220 of Pub. L. 102–484 provided that:

''(a) RULE OF CONSTRUCTION.—Except as otherwise expressly provided, in this section each reference to a section is a reference to a section of title 10, United States Code.

''(b) INITIAL REGULATIONS.—The Secretary of Defense shall ensure that the initial regulations prescribed to implement section 2506 provide that the national technology and industrial base plan required by such section include the matters set forth in subsections (c) through (f).

''(c) MANUFACTURING TECHNOLOGY GUIDANCE.—The initial regulations shall require that the guidance provided for manufacturing technology pursuant to section 2506(b)(4) include guidance with respect to the following:

''(1) The National Defense Manufacturing Technology Program established under section 2521.

''(2) The support of manufacturing extension programs under section 2523.

''(3) Programs to enhance basic research in scientific disciplines relating to manufacturing technology through—

''(A) encouraging research in colleges and universities in the United States and in associated centers of excellence; and

''(B) establishing technology transfer mechanisms, and technology education and training mechanisms, that ensure that the results of such research are readily available to United States industry.

''(4) Programs for encouraging the use of computer-integrated manufacturing to improve manufacturing quality, reduce manufacturing costs, reduce production lead times, and improve maintenance.

''(5) Programs for enhancing Department of Defense use of concurrent engineering practices in the design and development of weapon systems.

''(6) Programs providing incentives for firms in the national technology and industrial base to use advanced manufacturing technology and processes and to invest in improved productivity.

''(7) Programs for encouraging research in colleges and universities and in other technology development

and extension programs in the United States for development of systems that build on the skill and experience of workers.

''(8) Programs for assisting in the transition to high performance work systems, including ongoing worker involvement in the evaluation, selection, and installation and operation of production technologies and associated organization or work.

''(d) CRITICAL TECHNOLOGIES GUIDANCE.—The initial regulations shall require that the guidance provided pursuant to section 2506(b)(5) for the development of each critical technology include the following:

''(1) The specific funding requirements of the Department of Defense, the Department of Energy and other departments and agencies of the Federal Government for the development of the technology for the 5 fiscal years following the fiscal year in which the plan is submitted to Congress pursuant to section 2506(e).

''(2) A designation of the lead organization within the Department of Defense or the Department of Energy to be responsible for the development of the technology.

''(3) A summary description of the lead organization's plan for the development of the technology, including the milestone goals.

''(e) FINANCIAL POLICY GUIDANCE.—The initial regulations shall require that the guidance provided pursuant to section 2506(b)(6) with regard to financial policies of the Department of Defense and the Department of Energy (for national security programs) include guidance with respect to the following:

''(1) Policies relating to progress payments or other financing by the Department of Defense.

''(2) Policies relating to the return on contractor investment.

''(3) Policies relating to the allocation of contract risk between the Department of Defense and a contractor.

''(f) COMMERCIAL-MILITARY INTEGRATION GUIDANCE.—The initial regulations shall require that the guidance provided pursuant to section 2501(c) regarding integration of commercial products and processes into Federal acquisition practices include guidance with respect to the following:

''(1) Expanding the use of commercial specifications in place of Federal Government specifications.

''(2) Increasing the use of commercial manufacturing processes instead of processes specified by the Federal Government.

''(3) Reducing the extent of unique government regulatory requirements relating to accounting and acquisition.

''(4) Identifying and ensuring the effective application by the Department of Defense and the Department of Energy (for national security programs) of research, technologies, products, information, and practices developed by other departments and agencies of the Federal Government, State and local governments, colleges and universities, nonprofit organizations, and commercial enterprises.

''(5) Identifying effective mechanisms for transferring technology and related information, to the maximum extent practicable, from the Department of Defense and Department of Energy to other departments and agencies of the Federal Government, State and local governments, colleges and universities, nonprofit organizations, and commercial enterprises.

''(6) Ensuring, to the maximum extent practicable, that technology and related information are so transferred.

''(g) MAJOR PROGRAM GUIDANCE.—The initial regulations implementing section 2430(b), shall provide that the acquisition plan for each major defense acquisition program include provisions for the following:

''(1) An analysis of the capabilities of the national technology and industrial base to develop, produce, maintain, and support such program, including consideration of the factors set forth in section 4219(h).

''(2) Consideration of requirements for efficient manufacture during the design and production of the systems to be procured under the program.

''(3) The use of advanced manufacturing technology, processes, and systems during the research and development phase and the production phase of the program.

''(4) To the maximum extent practicable, the use of contract solicitations that encourage competing offerors to acquire, for use in the performance of the contract, modern technology, production equipment, and production systems (including hardware and software) that increase the productivity of the offerors and reduce life-cycle costs.

''(5) Encouragement of investment by United States domestic sources in advanced manufacturing technology production equipment and processes through—

''(A) recognition of the contractor's investment in advanced manufacturing technology production equipment, processes, and organization of work systems that build on workers' skill and experience, and work force skill development in the development of the contract objective; and

''(B) increased emphasis in source selections on the efficiency of production.

''(6) Expanded use of commercial manufacturing processes rather than processes specified by the Department of Defense.

''(7) Elimination of barriers to, and facilitation of, the integrated manufacture of commercial items and items being produced under Department of Defense contracts.

''(8) Expanded use of commercial products as set forth in section 2325.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2198, 2372, 2491, 2502, 2503, 2505, 2512, 2521 of this title; title 22 section 3142; title 42 section 2123.

§ 2507. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of this chapter and the regulations issued under this chapter.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under section (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the

national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''person'' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term ''national defense'' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102–484, div. D, title XLII, §4217, Oct. 23, 1992, 106 Stat. 2670; amended Pub. L. 103–160, div. A, title XI, §1182(b)(1), Nov. 30, 1993, 107 Stat. 1772.)

PRIOR PROVISIONS

A prior section 2507 was renumbered section 2534 of this title.

A prior section 2508 was renumbered section 2522 of this title and subsequently repealed.

A prior section 2509, added Pub. L. 101–510, div. A, title VIII, §825(a), Nov. 5, 1990, 104 Stat. 1604; amended Pub. L. 102–484, div. A, title X, §1052(34), Oct. 23, 1992, 106 Stat. 2501, required submission of defense industrial base annual reports, prior to repeal by Pub. L. 102–484, §4202(a).

A prior section 2510, added Pub. L. 101–510, div. A, title VIII, §826(a)(1), Nov. 5, 1990, 104 Stat. 1605, related to defense industrial base for textile and apparel products, prior to repeal by Pub. L. 102–484, §4202(a).

AMENDMENTS

1993—Pub. L. 103–160 inserted headings in subsecs. (a) to (f).

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.
2511. Defense dual-use critical technology partnerships.
2512. Commercial-military integration partnerships.
2513. Regional technology alliances assistance program.
2514. Encouragement of technology transfer.
2515. Office of Technology Transition.
2516. Military-Civilian Integration and Technology Transfer Advisory Board.
2517. Office for Foreign Defense Critical Technology Monitoring and Assessment.
2518. Overseas foreign critical technology monitoring and assessment financial assistance program.
2519. Federal Defense Laboratory Diversification Program.
2520. Navy Reinvestment Program.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XI, §1113(c), Oct. 5, 1994, 108 Stat. 2866, added items 2519 and 2520.

§2511. Defense dual-use critical technology partnerships

(a) ESTABLISHMENT OF PARTNERSHIPS.—The Secretary of Defense shall conduct a program to further the national security objectives set forth in section 2501(a) of this title, by providing for the establishment of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between the Department of Defense and entities referred to in subsection (b) in order to encourage and provide for research, development, and application of dual-use critical technologies. The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 2371 of this title in order to establish the partnerships.

(b) NON-DEPARTMENT OF DEFENSE PARTICIPANTS.—In the case of each partnership, the entities with which the Secretary enters into the partnership shall include two or more eligible firms or a nonprofit research corporation established by two or more eligible firms and, may also include, as determined appropriate by the Secretary of Defense, a Federal laboratory or laboratories, Government-owned and operated industrial facilities, institutions of higher education, agencies of State governments, and other entities that participate in the partnership by supporting the activities conducted by such firms or corporations under this section.

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary of Defense shall ensure that the amount of funds provided by the Federal Government to a partnership does not exceed 50 percent of the total cost of partnership activities.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the partnership from non-Federal sources.

(3) The Secretary shall consider a partnership proposal submitted by a small business concern

without regard to the ability of the small business concern to immediately meet its share of the anticipated partnership costs. Upon the selection of a partnership proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the partnership from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated partnership costs, the Secretary shall revoke the selection of the partnership proposal submitted by the small business concern.

(d) ASSISTANCE AUTHORIZED.—The Secretary of Defense may provide a partnership with technical and other assistance to facilitate the achievement of the purposes of this section. In providing such assistance, the Secretary shall make available, as appropriate for the work to be performed by each partnership, equipment and facilities of Department of Defense laboratories (including the scientists and engineers at those laboratories) to a partnership recognized under this section for purposes of any project that is approved by the Secretary.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of proposed partnerships for establishment under this section shall include the following:

(1) The extent to which the program proposed to be conducted by the partnership advances and enhances the national security objectives set forth in section 2501(a) of this title.

(2) The technical excellence of the program proposed to be conducted by the partnership.

(3) The qualifications of the personnel proposed to participate in the partnership's research activities.

(4) An assessment of timely private sector investment in activities to achieve the goals and objectives of the proposed partnership other than through the partnership.

(5) The potential effectiveness of the partnership in the further development and application of each technology proposed to be developed by the partnership for the national technology and industrial base.

(6) The extent of the financial commitment of eligible firms to the proposed partnership.

(7) The extent to which the partnership does not unnecessarily duplicate projects undertaken by other agencies.

(8) Such other criteria that the Secretary prescribes.

(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.

(Added Pub. L. 102–484, div. D, title XLII, § 4221(a), Oct. 23, 1992, 106 Stat. 2677; amended Pub. L. 103–160, div. A, title XIII, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(a), Oct. 5, 1994, 108 Stat. 2868.)

PRIOR PROVISIONS

A prior section 2511, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600; amended Pub. L. 102–190, div. A, title VIII, § 824(b), Dec. 5, 1991, 105 Stat. 1438, defined ''manufacturing technology'', ''manufacturing extension program'', and ''United States-based small manufacturing firm'' for purposes of former chapter 149 of this title, prior to repeal and restatement in section 2491 of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2511 was renumbered section 2540 of this title and subsequently repealed.

Provisions similar to those in this section were contained in section 2523 of this title, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1994—Subsec. (c)(3). Pub. L. 103–337 added par. (3).

1993—Subsec. (c). Pub. L. 103–160, § 1315(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense shall ensure that, to the maximum extent he determines to be practicable, the amount of the funds provided by the Federal Government under a partnership does not exceed the total amount provided by non-Federal Government participants in that partnership.''

Subsec. (e). Pub. L. 103–160, § 1317(c), struck out '', except that procedures other than competitive procedures may be used in any case in which an exception set out in section 2304(c) of this title applies'' after ''partnerships''.

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Section 1315(g) of Pub. L. 103–160 provided that: ''In the case of a project funded under section 2511, 2512, 2513, 2523, or 2524 of title 10, United States Code, using funds appropriated for a fiscal year beginning before October 1, 1993, the amendments made by this section [amending this section and sections 2491, 2512, 2513, 2523, and 2524 of this title] shall not alter the financial commitment requirements in effect on the day before the date of the enactment of this Act [Nov. 30, 1993] for the non-Federal Government participants in the project.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2512, 2513, 2519, 2520, 2522 of this title.

§ 2512. Commercial-military integration partnerships

(a) ESTABLISHMENT OF PARTNERSHIPS.—The Secretary of Defense shall conduct a program to further the national security objectives set forth in section 2501(a) of this title by providing for the establishment of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between the Department of Defense and one or more eligible firms and nonprofit research corporations referred to in section 2511(b) of this title. A partnership may also include, as determined appropriate by the Secretary of Defense, a Federal laboratory or laboratories, institutions of higher education, agencies of State governments, and other entities that participate in the partnership by supporting the activities conducted by such firms or corporations under this section.

(b) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, and enter into cooperative agreements and other transactions pursuant to section 2371 of this title in order to establish the partnerships.

(2) The Secretary may not enter into a partnership under this section for a period longer than 5 years.

(3) The Secretary may provide a partnership with technical and other assistance to facilitate the achievement of the purposes of this section, subject to the limitations in subsection (c).

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the amount of funds provided by the Secretary under a partnership does not exceed the maximum authorized percentage of the total cost of partnership activities.

(2) The maximum authorized percentage of funding referred to in paragraph (1) for each year of a partnership is as follows:

(A) 50 percent in the first year.

(B) 40 percent in the second year.

(C) 30 percent in the each of the third, fourth, and fifth years.

(3)(A) The Secretary shall prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of determining the share of the partnership costs that has been or is being undertaken by such participants.

(B) In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the partnership from non-Federal sources.

(C) The Secretary shall consider a partnership proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated partnership costs. Upon the selection of a partnership proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the partnership from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated partnership costs, the Secretary shall revoke the selection of the partnership proposal submitted by the small business concern.

(d) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(e) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the following:

(1) The extent to which the program proposed to be conducted by the partnership advances and enhances the national security objectives set forth in section 2501(a) of this title.

(2) The technical excellence of the program proposed to be conducted by the partnership.

(3) The qualifications of the personnel proposed to participate in the partnership's research activities.

(4) An assessment that timely private sector investment in activities to achieve the goals and objectives of the proposed partnership other than through the partnership.

(5) The potential effectiveness of the partnership in the further development and application of each technology proposed to be developed by the partnership for the industrial and technology base.

(6) The extent of the financial commitment of the eligible firms to the proposed partnership.

(7) The likelihood that the partnership will develop technologies that are sufficiently viable in the commercial sector so that such technologies will be available to meet the future reconstitution requirements and other needs of the Department of Defense described in the most recent national technology and industrial base plan prepared under section 2506 of this title.

(8) The likelihood that, within five years after the establishment of the partnership (or a lesser period established by the Secretary), Federal Government funding of the partnership will not be necessary.

(9) The extent to which the partnership does not unnecessarily duplicate programs undertaken by other Federal agencies.

(10) Such other criteria as the Secretary prescribes.

(Added Pub. L. 102–484, div. D, title XLII, §4222(a), Oct. 23, 1992, 106 Stat. 2679; amended Pub. L. 103–160, div. A, title XIII, §1315(b), Nov. 30, 1993, 107 Stat. 1787; Pub. L. 103–337, div. A, title XI, §1115(b), Oct. 5, 1994, 108 Stat. 2868.)

PRIOR PROVISIONS

A prior section 2512, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1600, related to responsibility of Secretary of Defense to provide management and planning, prior to repeal by Pub. L. 102–484, §4202(a).

AMENDMENTS

1994—Subsec. (c)(3)(C). Pub. L. 103–337 added subpar. (C).

1993—Subsec. (c)(3)(B). Pub. L. 103–160 added subpar. (B) and struck out former subpar. (B) which read as follows: "The regulations shall also ensure that the in-kind contributions of nonprofit institutions and small businesses are considered included, to the maximum extent practicable, in the non-Federal Government share of the cost of the partnership."

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

§2513. Regional technology alliances assistance program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense, in consultation and coordina-

tion with the Secretary of Commerce, shall conduct a program to further the national security objectives set forth in section 2501(a) of this title by providing assistance for the activities of eligible regional technology alliances in the United States.

(b) ELIGIBLE ALLIANCES.—A regional technology alliance is eligible for assistance under the program if—

(1) the purpose of the regional technology alliance is to facilitate the use of one or more defense critical technologies for defense and commercial purposes by an industry in the region served by that regional technology alliance in order to maintain within the United States industrial capabilities that are vital to the national security of the United States; and

(2) the regional technology alliance meets the other requirements of this section.

(c) PROGRAM PARTICIPANTS.—(1) The participants in a regional technology alliance—

(A) shall include—

(i) eligible firms that conduct business in the region of the United States served or to be served by the regional technology alliance; and

(ii) a sponsoring agency in such region; and

(B) may include other organizations considered appropriate by the Secretary of Defense.

(2)(A) A sponsoring agency of a regional technology alliance may be any agency described in subparagraph (B) that, as determined by the Secretary, provides adequate assurances that it will—

(i) meet the financial requirement in subsection (e); and

(ii) provide assistance in the management of the regional technology alliance.

(B) An agency referred to in subparagraph (A) is any of the following:

(i) An agency of a State or local government.

(ii) A nonprofit organization established, or performing functions, pursuant to an agreement entered into by one or more States or local governments.

(iii) A membership organization in which a State or local government is a member.

(iv) An institution of higher education designated by a State or local government.

(d) ASSISTANCE AUTHORIZED.—(1) Under the program, the Secretary may provide—

(A) financial assistance for the activities of a regional technology alliance (including, in the case of a proposed regional technology alliance, the establishment of such regional technology alliance) in any amount not in excess of 50 percent of the cost of conducting such activities (including the cost of establishing a proposed regional technology alliance) during the period covered by the financial assistance; and

(B) technical assistance for the activities (and, in the case of a proposed regional technology alliance, the establishment) of a regional technology alliance awarded financial assistance authorized by subparagraph (A).

(2) The Secretary may not provide financial assistance under the program for construction of facilities.

(3) The Secretary may furnish assistance to a regional technology alliance under the program for not more than six years.

(e) FINANCIAL CONTRIBUTIONS OF ALLIANCE PARTICIPANTS.—(1) The sponsoring agency of a regional technology alliance and the eligible firms participating in the regional technology alliance shall pay at least 50 percent of the total cost incurred each year for the activities of the regional technology alliance. Funds contributed for the activities of the regional technology alliance by institutions of higher education or private, nonprofit organizations participating in the regional technology alliance shall be considered as funds contributed by the sponsoring agency.

(2) If the right to use or license the results of any research and development activity of a regional technology alliance is limited by participants in the regional technology alliance to one or more, but less than one-half, of the eligible firms participating in the regional technology alliance, the non-Federal Government participants in the regional technology alliance shall pay the total cost incurred for such activity.

(3) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a regional technology alliance for the purpose of calculating the share of the costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of a regional technology alliance. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the regional technology alliance from non-Federal sources.

(4) The Secretary shall consider a proposal for a regional technology alliance that is submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated costs of the alliance. Upon the selection of a proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the regional technology alliance from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated costs, the Secretary shall revoke the selection of the proposal submitted by the small business concern.

(f) MANAGEMENT PLAN.—A regional technology alliance shall operate under a management plan that includes provisions for the eligible firms participating in the regional technology alliance to have the primary responsibility for di-

recting the activities of the regional technology alliance and to exercise that responsibility through, among any other means, majority voting membership of such firms on the board of directors of the regional technology alliance.

(g) ADMINISTRATION OF PROGRAM.—The Secretary shall prescribe regulations that, to the extent practicable, apply the same requirements and authorities in the administration of this section as apply under subsections (d) and (e) of section 2511 of this title in the case of the dual-use critical technologies partnerships program provided for in that section.

(h) SELECTION CRITERIA.—The criteria for selection of a regional technology alliance to receive financial assistance under this section shall include the following:

(1) The potential for the activities of the regional technology alliance to result in—

(A) increased availability of technology for the enhancement of national security; and

(B) the emergence in such region of new firms that are capable of applying dual-use critical technologies.

(2) The potential for the regional technology alliance to be able to apply critical technology research and development supported or conducted by Federal laboratories and institutions of higher education in the advancement of national security interests of the United States.

(3) The potential for the regional technology alliance to sustain itself through support from industry and other non-Federal Government sources after termination of the Federal assistance provided pursuant to this section.

(4) The level of involvement of appropriate State and local agencies, institutions of higher education, and private, nonprofit entities in the regional technology alliance.

(5) The potential for the regional technology alliance to increase industrial competitiveness.

(6) The potential for the regional technology alliance to meet the needs of small- and medium-sized defense-dependent companies across multiple activity areas including—

(A) outreach;

(B) manufacturing education and training;

(C) technology development;

(D) technology deployment; and

(E) business counseling.

(7) Such other criteria as the Secretary prescribes.

(Added Pub. L. 102–190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1428, §2524; renumbered §2513 and amended Pub. L. 102–484, div. D, title XLII, §4223(a)–(f), Oct. 23, 1992, 106 Stat. 2681; Pub. L. 103–35, title II, §201(d)(3), (e)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title XI, §1182(g)(2), title XIII, §§1315(c), 1316, Nov. 30, 1993, 107 Stat. 1774, 1787, 1789; Pub. L. 103–337, div. A, title XI, §1115(c), Oct. 5, 1994, 108 Stat. 2868.)

PRIOR PROVISIONS

A prior section 2513, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1601; amended Pub. L. 102–190, div. A, title II, §203(c), Dec. 5, 1991, 105 Stat. 1314, required annual National Defense Manufacturing Technology Plan, prior to repeal by Pub. L. 102–484, §4202(a).

AMENDMENTS

1994—Subsec. (e)(4). Pub. L. 103–337 added par. (4).

1993—Subsec. (b). Pub. L. 103–35, §201(e)(1)(A), substituted ''Alliances'' for ''Centers'' in heading.

Subsec. (c)(2)(B)(ii). Pub. L. 103–160, §1182(g)(2), substituted ''one or more'' for ''two or more''.

Subsec. (c)(2)(B)(iii), (iv). Pub. L. 103–35, §201(d)(3), added cl. (iv) and struck out second cl. (iii) which read as follows: ''an institution of higher education designated by a State or local government.''

Subsec. (e). Pub. L. 103–35, §201(e)(1)(B), substituted ''Alliance'' for ''Center'' in heading.

Subsec. (e)(3). Pub. L. 103–160, §1315(c), added par. (3).

Subsec. (h)(5) to (7). Pub. L. 103–160, §1316, added pars. (5) and (6) and redesignated former par. (5) as (7).

1992—Pub. L. 102–484, §4223(a), (b)(2), renumbered section 2524 of this title as this section and substituted ''Regional technology alliances'' for ''Critical technology application centers'' in section catchline.

Subsec. (a). Pub. L. 102–484, §4223(b)(1)(A), (c), substituted ''further the national security objectives set forth in section 2501(a) of this title by providing'' for ''provide'' and ''regional technology alliances'' for ''regional critical technology application centers''.

Subsec. (b). Pub. L. 102–484, §4223(b)(1)(B), (C), substituted ''technology alliance'' for ''critical technology application center'' in introductory provisions and ''regional technology alliance'' for ''center'' wherever appearing in pars. (1) and (2).

Subsec. (c)(1). Pub. L. 102–484, §4223(b)(1)(C), substituted ''regional technology alliance'' for ''critical technology application center'' in introductory provisions and for ''center'' in subpar. (A)(i).

Subsec. (c)(2)(A). Pub. L. 102–484, §4223(b)(1)(C), substituted ''regional technology alliance'' for ''center'' in introductory provisions and in cl. (ii).

Subsec. (c)(2)(B)(iii). Pub. L. 102–484, §4223(d), added cl. (iii) relating to an institution of higher education.

Subsec. (d). Pub. L. 102–484, §4223(b)(1)(C), (e)(1), substituted ''a regional technology alliance'' for ''a critical technology application center'' in pars. (1)(A) and (3), ''50 percent'' for ''30 percent'' in par. (1)(A), and ''regional technology alliance'' for ''center'' wherever appearing in par. (1).

Subsec. (e). Pub. L. 102–484, §4223(b)(1)(C), (e)(2), in par. (1) substituted ''a regional technology alliance'' for ''a critical technology application center'', ''50 percent'' for ''70 percent'', and ''the regional technology alliance'' for ''the center'' wherever appearing, and in par. (2) substituted ''regional technology alliance'' for ''center'' wherever appearing.

Subsec. (f). Pub. L. 102–484, §4223(b)(1)(C), substituted ''A regional technology alliance'' for ''A critical technology application center'' and ''the regional technology alliance'' for ''the center'' wherever appearing.

Subsec. (g). Pub. L. 102–484, §4223(f), substituted ''2511'' for ''2523''.

Subsec. (h). Pub. L. 102–484, §4223(b)(1)(C), substituted ''regional technology alliance'' for ''center'' wherever appearing.

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(c) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

§2514. Encouragement of technology transfer

(a) ENCOURAGEMENT OF TRANSFER REQUIRED.—The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of

Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 2501(a) of this title.

(b) EXAMINATION AND IMPLEMENTATION OF METHODS TO ENCOURAGE TRANSFER.—The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a) and the program described in subsection (c), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.

(c) PROGRAM TO ENCOURAGE DIVERSIFICATION OF DEFENSE LABORATORIES.—(1) The Secretary of Defense shall establish and implement a program to be known as the Federal Defense Laboratory Diversification Program (hereinafter in this subsection referred to as the ''Program''). The purpose of the Program shall be to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry of the United States in order to enhance and improve the products of such research and production activities.

(2) Under the Program, the defense laboratories, in coordination with the Office of Technology Transfer in the Office of the Secretary of Defense, shall carry out cooperative activities with private industry in order to promote (by the use or exchange of patents, licenses, cooperative research and development agreements and other cooperative agreements, and the use of symposia, meetings, and other similar mechanisms) the transfer of defense or dual-use technologies from the defense laboratories to private industry, and the development and application of such technologies by the defense laboratories and private industry, for the purpose of the commercial utilization of such technologies by private industry.

(3) The Secretary of Defense shall develop and annually update a plan for each defense laboratory that participates in the Program under which plan the laboratory shall carry out cooperative activities with private industry to promote the transfers described in subsection (b).

(4) In this subsection, the term ''defense laboratory'' means any laboratory owned or operated by the Department of Defense that carries out research in fiscal year 1993 in an amount in excess of $50,000,000.

(5) The Secretary shall coordinate the Program with the National Defense Technology and Industrial Base Council.

(Added Pub. L. 102–484, div. D, title XLII, § 4224(a), Oct. 23, 1992, 106 Stat. 2682.)

PRIOR PROVISIONS

A prior section 2514, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601, directed Secretary of Defense to enhance research relating to manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in section 2363 of this title prior to repeal by Pub. L. 102–484, §§ 4224(c), 4271(a)(2).

NATIONAL ACTION PLAN ON ADVANCED SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Superconductivity research and development activities by Secretary of Defense and by Defense Advanced Research Projects Agency, see section 5207 of Title 15, Commerce and Trade.

TECHNOLOGY TRANSFER TO PRIVATE SECTOR

Pub. L. 100–180, div. A, title II, § 218(c), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, shall take appropriate action to ensure that high-temperature superconductivity technology resulting from the research activities of the Department of Defense is transferred to the private sector. Such transfer shall be made in accordance with section 10(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)), other applicable provisions of law, and Executive Order Number 12591, dated April 10, 1987 [set out as a note under 15 U.S.C. 3710].

''(2) The Secretary of Energy, in consultation with the Under Secretary of Defense for Acquisition and Technology, shall ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent, in the transfer to the private sector of technology developed under the Department of Defense superconductivity program in the national laboratories.''

§ 2515. Office of Technology Transition

(a) ESTABLISHMENT.—The Secretary of Defense shall establish within the Office of the Secretary of Defense an Office of Technology Transition.

(b) PURPOSE.—The purpose of the office shall be to ensure, to the maximum extent practicable, that technology developed for national security purposes is integrated into the private sector of the United States in order to enhance national technology and industrial base, reinvestment, and conversion activities consistent with the objectives set forth in section 2501(a) of this title.

(c) DUTIES.—The head of the office shall ensure that the office—

(1) monitors all research and development activities that are carried out by or for the military departments and Defense Agencies;

(2) identifies all such research and development activities that use technologies, or result in technological advancements, having potential nondefense commercial applications;

(3) serves as a clearinghouse for, coordinates, and otherwise actively facilitates the transition of such technologies and technological advancements from the Department of Defense to the private sector;

(4) conducts its activities in consultation and coordination with the Department of Energy and the Department of Commerce; and

(5) provides private firms with assistance to resolve problems associated with security clearances, proprietary rights, and other legal considerations involved in such a transition of technology.

(d) REPORTING REQUIREMENT.—The Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives an annual report on the activities of the Office at the same time that the budget is submitted to Congress by the President pursuant to section 1105

of title 31. The report shall contain a discussion of the accomplishments of the Office during the fiscal year preceding the fiscal year in which the report is submitted.

(Added Pub. L. 102–484, div. D, title XLII, §4225(a), Oct. 23, 1992, 106 Stat. 2683.)

PRIOR PROVISIONS

A prior section 2515, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to computer-integrated manufacturing technology, prior to repeal by Pub. L. 102–484, §4202(a).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SCHEDULE FOR ESTABLISHMENT OF OFFICE OF TECHNOLOGY TRANSITION

Section 4225(b) of Pub. L. 102–484 provided that: ''The Office of Technology Transition shall commence operations within 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

SUBMISSION OF ANNUAL REPORT

Section 4225(c)(2) of Pub. L. 102–484 provided that: ''Notwithstanding section 2515(d) of title 10, United States Code (as added by subsection (a))—

''(A) the first report under that section shall be submitted not later than one year after the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) no additional report is necessary under that section in the fiscal year in which such first report is submitted.''

§2516. Military-Civilian Integration and Technology Transfer Advisory Board

(a) ESTABLISHMENT.—There is established a Military-Civilian Integration and Technology Transfer Advisory Board (in this section referred to as the ''Advisory Board'').

(b) GOALS.—The goals of the Advisory Board are to ensure, in furtherance of the national security objectives set forth in section 2501(a) of this title—

(1) the effective integration of commercial technologies and best practices into defense industries;

(2) the efficient transfer of defense technologies to civilian industries, where applicable;

(3) that civilian markets are appropriately integrated into dual-use technology development strategies; and

(4) that dual-use critical technologies are used in carrying out defense reinvestment, diversification, and conversion activities described in section 2501(b) of this title.

(c) COMPOSITION.—The Advisory Board shall be composed of at least 17 members. The members of the Advisory Board shall be appointed by the National Defense Technology and Industrial Base Council from among individuals who, because of their experience and accomplishments in defense or civilian technology development, business development, international trade, or finance, are exceptionally qualified to analyze and formulate policy that would improve the integration of military and civilian capabilities and resources. The National Defense Technology and Industrial Base Council shall designate one member to serve as chairman, with the chairmanship to change annually. Membership of the Advisory Board shall be composed of—

(1) representatives of—

(A) large and small firms involved in both defense and civilian technologies;

(B) universities and independent research institutes;

(C) State and local government agencies involved in technology extension and economic development;

(D) Federal defense and nondefense laboratories;

(E) industrial, worker, and professional organizations; and

(F) financial organizations; and

(2) other individuals that possess important insight to issues of military-commercial integration, as determined by the National Defense Technology and Industrial Base Council.

(d) DUTIES.—The duties of the Advisory Board shall include—

(1) advising the National Defense Technology and Industrial Base Council in the planning, execution, and evaluation of programs in the Department of Defense that would facilitate military-commercial integration, including the research, development, and application of dual-use technologies, and manufacturing and industrial assistance programs, educational programs, and financial support programs;

(2) advising the National Defense Technology and Industrial Base Council on policies that the Advisory Board considers essential to effective military-commercial integration;

(3) organizing a Dual-Use Technology Subboard that will advise the Council on the effectiveness of military-civilian integration regarding dual-use technologies and strategies; and

(4) organizing other sub-boards, with the consent or at the request of the Council, to examine priority issues in military-civilian integration.

(e) MEETINGS.—The Advisory Board shall meet at least once every four months, and at the call of the Council.

(f) TRAVEL EXPENSES.—Members of the Advisory Board, other than full-time employees of the United States, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5 when engaged in the business of the Advisory Board.

(g) TERMINATION.—The Advisory Board shall terminate at the close of fiscal year 1997.

(Added Pub. L. 102–484, div. D, title XLII, §4226(a), Oct. 23, 1992, 106 Stat. 2684; amended Pub. L. 103–35, title II, §201(g)(8), May 31, 1993, 107 Stat. 100.)

PRIOR PROVISIONS

A prior section 2516, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to enhancement of concurrent engineering practices in design and development of weapon systems, prior to repeal by Pub. L. 102–484, §4202(a).

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103–35 substituted ''dual-use'' for ''dual use''.

FIRST MEETING OF ADVISORY BOARD

Section 4226(b) of Pub. L. 102–484 provided that: ''The chairman of the Military-Civilian Integration and Technology Transfer Advisory Board shall call the first meeting of the Advisory Board no later than 90 days after the date of enactment of this Act [Oct. 23, 1992].''

§ 2517. Office for Foreign Defense Critical Technology Monitoring and Assessment

(a) IN GENERAL.—The Secretary of Defense shall establish within the Office of the Director of Defense Research and Engineering an office known as the ''Office for Foreign Defense Critical Technology Monitoring and Assessment'' (hereinafter in this section referred to as the ''Office'').

(b) RELATIONSHIP TO DEPARTMENT OF COMMERCE.—The head of the Office shall consult closely with appropriate officials of the Department of Commerce in order—

(1) to minimize the duplication of any effort of the Department of Commerce by the Department of Defense regarding the monitoring of foreign activities related to defense critical technologies that have potential commercial uses; and

(2) to ensure that the Office is effectively utilized to disseminate information to users of such information within the Federal Government.

(c) RESPONSIBILITIES.—The Office shall have the following responsibilities:

(1) To maintain within the Department of Defense a central library for the compilation and appropriate dissemination of unclassified and classified information and assessments regarding significant foreign activities in research, development, and applications of defense critical technologies.

(2) To establish and maintain—

(A) a widely accessible unclassified data base of information and assessments regarding foreign science and technology activities that involve defense critical technologies, including, especially, activities in Europe and in Pacific Rim countries; and

(B) a classified data base of information and assessments regarding such activities.

(3) To perform liaison activities among the military departments, Defense Agencies, and other appropriate elements of the Department of Defense, with appropriate agencies and offices of the Department of Commerce and the Department of State, and with other departments and agencies of the Federal Government in order to ensure that significant activities in research, development, and applications of defense critical technologies are identified, monitored, and assessed by an appropriate department or agency of the Federal Government.

(4) To ensure the maximum practicable public availability of information and assessments contained in the unclassified data bases established pursuant to paragraph (2)—

(A) by limiting, to the maximum practicable extent, restrictive classification of such information and assessments; and

(B) by disseminating to the National Technical Information Service of the Department of Commerce information and assessments regarding defense critical technologies having potential commercial uses.

(5) To disseminate through the National Technical Information Service of the Department of Commerce unclassified information and assessments regarding defense critical technologies having potential commercial uses so that such information and assessments may be further disseminated within the Federal Government and to the private sector.

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1430, § 2525; renumbered § 2517 and amended Pub. L. 102–484, div. D, title XLII, § 4227, Oct. 23, 1992, 106 Stat. 2685.)

PRIOR PROVISIONS

A prior section 2517 was renumbered section 2523 of this title.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2525 of this title as this section and inserted ''Critical'' after ''Foreign Defense'' in subsec. (a).

§ 2518. Overseas foreign critical technology monitoring and assessment financial assistance program

(a) ESTABLISHMENT AND PURPOSE OF PROGRAM.—The Secretary of Defense may establish a foreign critical technology monitoring and assessment program. Under the program, the Secretary may enter into cooperative arrangements with one or more eligible not-for-profit organizations in order to provide financial assistance for the establishment of foreign critical technology monitoring and assessment offices in Europe, Pacific Rim countries, and such other countries as the Secretary considers appropriate.

(b) ELIGIBLE ORGANIZATIONS.—Any not-for-profit industrial or professional organization that has economic and scientific interests in research, development, and applications of dual-use critical technologies is eligible to enter into a cooperative arrangement referred to in subsection (a).

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1431, § 2526; renumbered § 2518, Pub. L. 102–484, div. D, title XLII, § 4228, Oct. 23, 1992, 106 Stat. 2685.)

PRIOR PROVISIONS

A prior section 2518 was renumbered section 2522 of this title.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2526 of this title as this section.

§ 2519. Federal Defense Laboratory Diversification Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program in accordance with this section for the purpose of promoting cooperation between Department of Defense laboratories and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 2501(a) of this title.

(b) PARTNERSHIPS.—(1) The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between a Department of Defense laboratory and eligible firms and nonprofit research corporations referred to in section 2511(b) of this title. A partnership may also include one or more additional Federal laboratories, institutions of higher education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(2) For purposes of this section, a federally funded research and development center shall be considered a Department of Defense laboratory if the center is sponsored by the Department of Defense.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, enter into cooperative agreements and other transactions pursuant to section 2371 of this title, and enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) in order to establish partnerships.

(2) Subject to subsection (d), the Secretary may provide a partnership with technical and other assistance in order to facilitate the achievement of the purpose of this section.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the non-Federal Government participants in a partnership make a substantial contribution to the total cost of partnership activities. The amount of the contribution shall be commensurate with the risk undertaken by such participants and the potential benefits of the activities for such participants.

(2) The regulations prescribed pursuant to section 2511(c)(2) of this title shall apply to in-kind contributions made by non-Federal Government participants in a partnership.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the criteria set forth in section 2511(f) of this title.

(g) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, §1113(a), Oct. 5, 1994, 108 Stat. 2864.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2520 of this title.

§2520. Navy Reinvestment Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of the Navy shall conduct a program in accordance with this section for the purpose of promoting cooperation between the Department of the Navy and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 2501(a) of this title.

(b) PARTNERSHIPS.—The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between Department of the Navy entities and eligible firms and nonprofit research corporations referred to in section 2511(b) of this title. A partnership may also include one or more Federal laboratories, institutions of higher education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(c) PROGRAM REQUIREMENTS AND ADMINISTRATION.—Subsections (c) through (f) of section 2519 of this title shall apply in the administration of the program.

(d) ADDITIONAL SELECTION CRITERIA.—The selection criteria for a proposed partnership for establishment under this section shall also include the potential effectiveness of the partnership in the further development and application of each technology proposed to be developed by the partnership for Navy acquisition programs.

(e) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, §1113(b), Oct. 5, 1994, 108 Stat. 2865.)

SUBCHAPTER IV—MANUFACTURING TECHNOLOGY AND DUAL-USE ASSISTANCE EXTENSION PROGRAMS

Sec.
2521. National Defense Manufacturing Technology Program.
2522. Defense Advanced Manufacturing Technology Partnerships.
2523. Manufacturing extension programs.
2524. Defense dual-use assistance extension program.
2525. Manufacturing Science and Technology Program.[1]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title II, §256(a)(2), Oct. 5, 1994, 108 Stat. 2704, substituted ''Manufacturing Science and'' for ''Industrial Preparedness Manufacturing'' in item 2525.

1993—Pub. L. 103–160, div. A, title VIII, §801(a)(2), Nov. 30, 1993, 107 Stat. 1701, added item 2525.

§2521. National Defense Manufacturing Technology Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall establish a National Defense Manufacturing Technology Program. The Secretary shall use the program to—

(1) provide centralized guidance and direction (including goals, milestones, and priorities) to the military departments and the Defense Agencies on all matters relating to manufacturing technology;

(2) direct the development and implementation of Department of Defense plans, programs, projects, activities, and policies that promote the development and application of advanced technologies to manufacturing processes, tools, and equipment;

(3) improve the manufacturing quality, productivity, technology, and practices of businesses and workers providing goods and services to the Department of Defense;

[1] So in original. Does not conform to section catchline.

(4) promote dual-use manufacturing processes;

(5) disseminate information concerning improved manufacturing improvement concepts, including information on such matters as best manufacturing practices, product data exchange specifications, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts;

(6) sustain and enhance the skills and capabilities of the manufacturing work force;

(7) promote high-performance work systems (with development and dissemination of production technologies that build upon the skills and capabilities of the work force), high levels of worker education and training; and

(8) ensure appropriate coordination between the manufacturing technology programs and industrial preparedness programs of the Department of Defense and similar programs undertaken by other departments and agencies of the Federal Government or by the private sector.

(b) RELATIONSHIP TO NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PLAN.—The Secretary shall ensure that the program is developed and implemented in accordance with the manufacturing technology guidance set forth in the national technology and industrial base plan prepared under section 2506 of this title.

(c) REVISIONS.—The Secretary shall revise the program not later than March 15 of each year through fiscal year 1997 and of each odd-numbered year thereafter. Each revision shall identify each manufacturing technology program, project, or activity of the Department of Defense and the amounts provided for each such program, project, and activity in the budget submitted by the President under section 1105 of title 31 for the fiscal year beginning in that year.

(Added Pub. L. 102–484, div. D, title XLII, § 4231(a), Oct. 23, 1992, 106 Stat. 2686.)

PRIOR PROVISIONS

A prior section 2521, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1426, defined terms for purposes of former chapter 150 of this title, prior to repeal and restatement in section 2491 of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2521 was renumbered section 2540 of this title and subsequently repealed.

§ 2522. Defense Advanced Manufacturing Technology Partnerships

(a) ESTABLISHMENT OF PARTNERSHIPS.—The Secretary of Defense may, in order to further the national security objectives set forth in section 2501(a) of this title, enter into cooperative arrangements (hereinafter in this section referred to as ''partnerships'') with entities referred to in subsection (b) in order to encourage and provide for research and development of advanced manufacturing technologies with the potential for having a broad range of military and dual-use applications.

(b) NON-DEPARTMENT OF DEFENSE PARTICIPANTS.—In the case of each partnership, the entities with which the Secretary enters into the partnership shall include two or more eligible firms or a nonprofit research corporation established by two or more eligible firms and may also include, as determined appropriate by the Secretary of Defense, a Federal laboratory or laboratories, institutions of higher education, agencies of State governments, and other entities that participate in the partnership by supporting the activities conducted by such firms or corporations under this section. A partnership may include other organizations considered appropriate by the Secretary of Defense.

(c) ADMINISTRATION OF PROGRAM.—The Secretary shall prescribe regulations that, to the extent practicable, apply the same requirements and authorities in the administration of this section as apply under subsections (c) through (e) of section 2511 of this title in the case of the dual-use critical technologies partnerships program provided for in that section.

(d) SELECTION CRITERIA.—The criteria for the selection of proposed partnerships for establishment under this section shall include the following criteria:

(1) The criteria specified in section 2511(f) of this title.

(2) The extent to which the partnerships provide for the development of advanced manufacturing technologies usable for significantly reducing the potential health, safety, and environmental hazards associated with existing manufacturing processes.

(3) Such other criteria as prescribed by the Secretary of Defense, in consultation with the Council.

(Added Pub. L. 102–190, div. A, title VIII, § 823(a)(1), Dec. 5, 1991, 105 Stat. 1435, § 2518; renumbered § 2522 and amended Pub. L. 102–484, div. D, title XLII, § 4232(a), (b), Oct. 23, 1992, 106 Stat. 2687.)

PRIOR PROVISIONS

A prior section 2522, added Pub. L. 101–189, div. A, title VIII, § 841(b)(1), Nov. 29, 1989, 103 Stat. 1512, § 2508; amended Pub. L. 101–510, div. A, title VIII, § 821(a), Nov. 5, 1990, 104 Stat. 1597; Pub. L. 102–25, title VII, § 701(g)(3), Apr. 6, 1991, 105 Stat. 115; renumbered § 2522, Pub. L. 102–190, div. A, title VIII, § 821(b)(1), Dec. 5, 1991, 105 Stat. 1431, required an annual defense critical technologies plan, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1992—Pub. L. 102–484, § 4232(a), renumbered section 2518 of this title as this section.

Subsec. (a). Pub. L. 102–484, § 4232(b)(1), inserted '', in order to further the national security objectives set forth in section 2501(a) of this title,'' after ''Defense may'' and ''military and dual-use'' after ''broad range of''.

Subsec. (c). Pub. L. 102–484, § 4232(b)(2), substituted ''2511'' for ''2523''.

Subsec. (d). Pub. L. 102–484, § 4232(b)(3), substituted ''2511(f)'' for ''2523(f)'' in par. (1) and added par. (3).

Subsec. (e). Pub. L. 102–484, § 4232(b)(4), struck out subsec. (e) which read as follows: ''DEFINITIONS.—In this section, the terms 'eligible firm' and 'Federal laboratory' have the meanings given such terms in section 2521 of this title.''

ESTABLISHMENT OF INITIAL PARTNERSHIPS

Section 823(b) of Pub. L. 102–190 directed Secretary of Defense to establish not less than two advanced manufacturing technology partnerships under section 2518 [now 2522] of this title not later than one year after Oct. 23, 1992.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 638; title 22 section 3142.

§ 2523. Manufacturing extension programs

(a) USE OF PROGRAMS.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, and in coordination with the Secretary of Commerce and the Secretary of Energy, shall promote the improvement of the subtier defense industry through use of manufacturing extension programs. Manufacturing extension programs so used shall include programs carried out by the Secretary of Commerce pursuant to section 25 and section 26 of the Act of March 3, 1901 (15 U.S.C. 278k and 278*l*) and section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 278*l* note).

(b) PROGRAM REQUIREMENTS.—(1) The Secretary of Defense, in consultation with the Secretary of Commerce, shall, in order to further the national security objectives set forth in section 2501(a) of this title, establish a program—

(A) to support existing manufacturing extension programs of regions, States, local governments, and private, nonprofit organizations;

(B) to promote the development of a broad range of such programs that will benefit both the national security and the economic prosperity of the United States; and

(C) to increase the involvement of appropriate segments of the private sector in activities that improve the manufacturing quality, productivity, and performance of United States-based small manufacturing firms.

(2) In awarding financial assistance under the program, the Secretary, on the basis of merit pursuant to a competitive selection process, shall select manufacturing extension programs that demonstrate evidence of the following:

(A) Comprehensive and high quality services, including staff with significant experience in industrial manufacturing.

(B) Significant involvement by, and support from, private industry.

(C) The potential for assisting a significant number of United States-based small manufacturing firms with a limited expenditure of Federal funds.

(3)(A) The Secretary shall ensure that the amount of financial assistance furnished by the Federal Government to a manufacturing extension program under this subsection may not exceed 50 percent of the total cost of the program. Financial assistance shall be provided to a recipient program for a period of five years unless such financial assistance is earlier terminated for good cause. Recipients of such financial assistance shall be required to report to the Secretary annually beginning one year after the date that such financial assistance is initiated. Such report shall include a description of the progress of the recipient program in meeting the objectives set out in paragraph (1).

(B) The Secretary of Defense shall require a major evaluation of each manufacturing extension program receiving financial assistance under this subsection. The evaluation shall be conducted during the third year that such program receives such financial assistance. If, on the basis of such evaluation, the Secretary finds that the financial assistance to the extension program should be terminated for good cause, the Secretary shall provide sufficient financial assistance to terminate that program. The amount of that assistance may not exceed the amount that would otherwise have been provided for continuing the financial assistance to the recipient program through the end of the fourth year.

(C) Subparagraphs (A) and (B) do not prohibit a recipient program from reapplying for financial assistance under this subsection upon the expiration or termination of the furnishing of financial assistance under this subsection. The application for additional financial assistance shall be subject to the requirements and procedures set out in this subsection in the same manner and to the same extent as initial applications for financial assistance under this subsection.

(D) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a manufacturing extension program for the purpose of calculating the share of the costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of the program. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the program from non-Federal sources.

(4) The Secretary of Defense and the Secretary of Commerce shall enter into an agreement for carrying out the program established pursuant to this subsection. The agreement shall include procedures to ensure that the program is fully coordinated with related manufacturing programs of the Department of Commerce.

(Added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1602, § 2517; amended Pub. L. 102–190, div. A, title VIII, § 824(a), Dec. 5, 1991, 105 Stat. 1436; renumbered § 2523 and amended Pub. L. 102–484, div. D, title XLII, § 4233(a), (b), Oct. 23, 1992, 106 Stat. 2687; Pub. L. 103–160, div. A, title IX, § 904(d)(1), title XI, § 1182(b)(2), title XIII, § 1315(d), Nov. 30, 1993, 107 Stat. 1728, 1772, 1787.)

REFERENCES IN TEXT

Section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418], referred to in subsec. (a), is set out as a note under section 278*l* of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 2523, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1427, related to defense dual-use critical technology partnerships, prior to repeal and restatement in section 2511 of this title by Pub. L. 102–484, §§ 4202(a), 4221(a).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, § 1182(b)(2)(A), inserted heading.

Pub. L. 103–160, § 904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

Subsec. (b). Pub. L. 103–160, § 1182(b)(2)(B), inserted heading.

Subsec. (b)(3)(A). Pub. L. 103–160, § 1315(d)(1), substituted ''The Secretary shall ensure that the amount of financial assistance furnished by the Federal Government to a manufacturing extension program under this subsection may not exceed 50 percent of the total cost of the program'' for ''The amount of financial assistance furnished to a manufacturing extension program under this subsection may not exceed the total amount provided by non-Federal Government participants in the program for the period for which the assistance is to be provided''.

Subsec. (b)(3)(D). Pub. L. 103–160, § 1315(d)(2), added subpar. (D).

1992—Pub. L. 102–484, § 4233(a), renumbered section 2517 of this title as this section.

Subsec. (b)(1). Pub. L. 102–484, § 4233(b), inserted '', in order to further the national security objectives set forth in section 2501(a) of this title,'' after ''shall''.

1991—Pub. L. 102–190 designated existing provisions as subsec. (a), struck out before period at end of first sentence ''and other existing organizations chartered to help small manufacturers for the purpose of disseminating such Department of Defense manufacturing concepts as best manufacturing practices, product data exchange specification, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts'', inserted ''and section 26'' after ''section 25'' and ''and 278*l*'' after ''278k'' in second sentence, and added subsec. (b).

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(d) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

§ 2524. Defense dual-use assistance extension program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense, in consultation and coordination with the Secretary of Energy and the Secretary of Commerce, shall establish a program to further the national security objectives set forth in section 2501(a) of this title and the defense reinvestment, diversification, and conversion program objectives set forth in section 2501(b) of this title by providing support to entities referred to in subsection (b) for programs described in that subsection.

(b) PROGRAMS SUPPORTED.—The Secretary may provide support under this section for programs sponsored by the Federal Government, regional entities, States, local governments, and private entities and nonprofit organizations that assist businesses economically dependent on Department of Defense expenditures to acquire dual-use capabilities through the provision under those programs of the following forms of assistance:

(1) Assistance in converting from government-oriented management, production, training, and marketing practices to commercial practices.

(2) Assistance in acquiring and using public and private sector resources, literature, and other information concerning—

(A) research, development, and production processes and practices;

(B) identification of technologies and products having the potential for defense and nondefense commercial applications;

(C) marketing practices and opportunities;

(D) identification of potential suppliers, partners, and subcontractors;

(E) identification of opportunities for government support, including support through grants, contracts, partnerships, and consortia;

(F) enhancement of workforce skills and capabilities, including—

(i) development and introduction of high-performance work systems, workforce literacy programs, and programs for worker education and training;

(ii) other programs that build upon the skills and capabilities of the workforce; and

(G) trade and export assistance.

(3) Loan guarantees to small business concerns and medium-sized business concerns that are economically dependent on defense expenditures, under the terms and conditions specified under other applicable law.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 2371 of this title.

(2) Subject to subsection (d), the Secretary may provide a program referred to in subsection (b) with technical and other assistance.

(3) The Secretary is authorized to carry out a program to provide assistance to small businesses that are economically dependent on defense expenditures to obtain access to a national network of scientists and engineers, and to information resources (including access through on-line data bases to local, national, and international technical and business literature encompassing a wide range of technologies), that can help minimize technical risk and thereby facilitate the development and commercialization of new products.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the amount of funds provided by the Secretary to a program under this section does not exceed 50 percent of the total cost of the program.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a program under this section for the purpose of calculating the share of the costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of the program. Any such funds so used may be considered in calculating the amount of the financial commitment under-

taken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the program from non-Federal sources.

(3) The Secretary shall consider a program proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated program costs. Upon the selection of a proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the program from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated program costs, the Secretary shall revoke the selection of the program proposal submitted by the small business concern.

(e) SPECIAL REQUIREMENTS REGARDING LOAN GUARANTEES.—(1) The Secretary shall carry out the loan guarantee program authorized under subsection (b)(3) during any fiscal year for which funds are specifically made available to cover the costs of loan guarantees to be issued pursuant to such subsection.

(2) In addition to the selection criteria specified in subsection (f), the selection criteria in the case of the loan guarantee program under subsection (b)(3) shall also include the following:

(A) The extent to which the loans to be guaranteed would support the retention of defense workers whose employment would otherwise be permanently or temporarily terminated as a result of reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

(B) The extent to which the loans to be guaranteed would stimulate job creation and new economic activities in communities most adversely affected by reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

(C) The extent to which the loans to be guaranteed would be used to acquire (or permit the use of other funds to acquire) capital equipment to modernize or expand the facilities of the borrower to enable the borrower to remain in the national technology and industrial base available to the Department of Defense.

(3) To be eligible for a loan guarantee under subsection (b)(3), a borrower must be able to demonstrate to the satisfaction of the Secretary that at least 25 percent of the value of the borrower's sales during the preceding fiscal year were derived from—

(A) contracts with the Department of Defense or the defense-related activities of the Department of Energy; or

(B) subcontracts in support of defense-related prime contracts.

(4) The maximum amount of loan principal that the Secretary may guarantee under the loan guarantee program during a fiscal year may not exceed—

(A) $1,250,000, with respect to a small business concern; and

(B) $10,000,000 with respect to a medium-sized business concern.

(f) SELECTION PROCESS AND CRITERIA.—Competitive procedures shall be used in the selection of programs to receive assistance under this section. The criteria for the selection of a program to receive assistance under this section shall include the following:

(1) The extent to which the program advances and enhances the national security objectives set forth in section 2501(a) of this title and the reinvestment, diversification, and conversion program objectives set forth in section 2501(b) of this title.

(2) The technical excellence of the program.

(3) The qualifications of the personnel proposed to participate in the program's research activities.

(4) The adequacy of timely private sector investment in activities that is sufficient to achieve the goals and objectives of the programs.

(5) The potential effectiveness of the program in the conversion of businesses (and their work forces) from capabilities that make the companies economically dependent on Department of Defense expenditures to capabilities having defense and nondefense commercial applications.

(6) The ability of the program to assist businesses (and their work forces) that are adversely affected by significant reductions in Department of Defense spending.

(7) The extent of the financial commitment by sources other than the Department of Defense.

(8) The extent to which the program would supplement, rather than duplicate, other available services.

(9) The likelihood that, within five years after the commencement of assistance for a program under this section (or a lesser period established by the Secretary), Department of Defense assistance will not be necessary to sustain the program.

(10) Such other criteria as the Secretary prescribes.

(g) DEFINITION.—In this section, the ''medium-sized business concern'' means a business concern that is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing a product or service is a small business concern.

(h) TERMINATION OF AUTHORITY.—After September 30, 1995, funds may be provided by the Department of Defense under this section only for programs referred to in subsection (b) for which funds have been provided by the Department of Defense under this section on or before that date. No funds may be provided by the De-

partment of Defense under this section for a program referred to in subsection (b) after September 30, 1998.

(Added Pub. L. 102–484, div. D, title XLII, § 4234(a), Oct. 23, 1992, 106 Stat. 2687; amended Pub. L. 103–35, title II, § 201(g)(9), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §§ 1314, 1315(e), Nov. 30, 1993, 107 Stat. 1786, 1788; Pub. L. 103–337, div. A, title X, § 1070(b)(10), title XI, §§ 1114(b), (c), 1115(d), Oct. 5, 1994, 108 Stat. 2857, 2867–2869.)

PRIOR PROVISIONS

A prior section 2524 was renumbered section 2513 of this title.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–337, § 1115(d), added par. (3).

Subsec. (e). Pub. L. 103–337, § 1114(b), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''Competitive procedures shall be used in the selection of programs to receive assistance under this section.''

Subsec. (f). Pub. L. 103–337, § 1114(c), substituted ''Selection Process and Criteria'' for ''Selection Criteria'' in heading and inserted after heading ''Competitive procedures shall be used in the selection of programs to receive assistance under this section.''

Subsec. (g). Pub. L. 103–337, § 1070(b)(10), made technical correction to directory language of Pub. L. 103–160, § 1314(3). See 1993 Amendment note below.

1993—Subsec. (b)(2)(F). Pub. L. 103–35 substituted ''workforce'' for ''work force'' in introductory provisions and in cl. (ii).

Subsec. (b)(3). Pub. L. 103–160, § 1314(1), substituted ''small business concerns and medium-sized business concerns'' for ''small businesses''.

Subsec. (d). Pub. L. 103–160, § 1315(e), substituted ''Non-Federal Government'' for ''Non-Department of Defense'' in heading and amended text generally. Prior to amendment, text read as follows:

''(1) The Secretary shall ensure that the amount of funds provided by the Department of Defense for a program under this section does not exceed the maximum authorized percentage of the combined amount provided by the Department of Defense and all other sources of funding for the program for any year.

''(2) The maximum authorized percentage of Department of Defense funding referred to in paragraph (1) for each year of Department of Defense assistance for a program under this section is as follows:

''(A) 50 percent in the first year.

''(B) 40 percent in the second year.

''(C) 30 percent in the third and following years.''

Subsec. (g). Pub. L. 103–160, § 1314(3), as amended by Pub. L. 103–337, § 1070(b)(10), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 103–160, § 1314(2), redesignated subsec. (g) as (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(e) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

§ 2525. Manufacturing science and technology program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Manufacturing Science and Technology Program to further the national security objectives of section 2501(a) of this title. The Under Secretary of Defense for Acquisition and Technology shall administer the program.

(b) PURPOSE.—The purpose of the program is to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.

(c) EXECUTION.—The Secretary may carry out projects under the program through the Secretaries of the military departments and the heads of the Defense Agencies.

(d) COMPETITION AND COST SHARING.—(1) Competitive procedures shall be used for awarding all grants and entering into all contracts, cooperative agreements, and other transactions under the program.

(2) A grant may not be awarded under the program, and a contract, cooperative agreement, or other transaction may not be entered into under the program, on any basis other than a cost-sharing basis unless the Secretary of Defense determines that the grant, contract, cooperative agreement, or other transaction, as the case may be, is for a program that—

(A) is not likely to have any immediate and direct commercial application; or

(B) is of sufficiently high risk to discourage cost sharing by non-Federal Government sources.

(Added Pub. L. 103–160, div. A, title VIII, § 801(a)(1), Nov. 30, 1993, 107 Stat. 1700; amended Pub. L. 103–337, div. A, title II, § 256(a)(1), Oct. 5, 1994, 108 Stat. 2704.)

PRIOR PROVISIONS

A prior section 2525 was renumbered section 2517 of this title.

A prior section 2526 was renumbered section 2518 of this title.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Manufacturing science and technology program'' for ''Industrial Preparedness Manufacturing Technology Program'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish an Industrial Preparedness Manufacturing Technology program to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

Sec.
2531. Defense memoranda of understanding and related agreements.
2532. Offset policy; notification.
2533. Determinations of public interest under the Buy American Act.
2534. Miscellaneous limitations on the procurement of goods other than United States goods.
2535. Defense Industrial Reserve.
2536. Award of certain contracts to entities controlled by a foreign government: prohibition.
2537. Improved national defense control of technology diversions overseas.

Sec.
2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.
2539. Industrial mobilization: plants; lists.
2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.
2539b. Availability of samples, drawings, information, equipment, materials, and certain services.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title VIII, § 812(b)(2), title X, § 1070(a)(13)(B), Oct. 5, 1994, 108 Stat. 2816, 2856, substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' in item 2533 and renumbered items 2540 and 2541 as 2539a and 2539b, respectively.

1993—Pub. L. 103–160, div. A, title VIII, §§ 828(c)(5), 842(c)(2), Nov. 30, 1993, 107 Stat. 1714, 1719, substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government'' in item 2536 and added items 2538 to 2541.

1992—Pub. L. 102–484, div. A, title VIII, §§ 836(a)(2), 838(b), Oct. 23, 1992, 106 Stat. 2463, 2466, added items 2536 and 2537.

§ 2531. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an inter-agency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of understanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100–456, div. A, title VIII, § 824, Sept. 29, 1988, 102 Stat. 2019, § 2504; amended Pub. L. 101–189, div. A, title VIII, § 815(a), Nov. 29, 1989, 103 Stat. 1500; Pub. L. 101–510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102–484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

AMENDMENTS

1992—Pub. L. 102–484, § 4202(a), renumbered section 2504 of this title as this section.

Subsec. (a)(1). Pub. L. 102–484, § 4271(c), substituted ''defense technology and industrial base'' for ''defense industrial base''.

1990—Subsec. (a). Pub. L. 101–510 inserted ''or to the reciprocal procurement of defense items,'' after ''defense equipment,'' in introductory provisions.

1989—Pub. L. 101–189 inserted ''and related agreements'' after ''understanding'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''In the negotiation and renegotiation of each memorandum of understanding between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, the Secretary of Defense shall—

''(1) consider the effect of such proposed memorandum of understanding on the defense industrial base of the United States; and

''(2) regularly solicit and consider information or recommendations from the Secretary of Commerce with respect to the effect on the United States industrial base of such memorandum of understanding.''

§ 2532. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United

States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm's claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding $50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.

(d) DEFINITIONS.—In this section:

(1) The term ''United States firm'' means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(2) The term ''foreign firm'' means a business entity other than a United States firm.

(Added Pub. L. 100–456, div. A, title VIII, § 825(b), Sept. 29, 1988, 102 Stat. 2020, § 2505; renumbered § 2532, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659.)

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2505 of this title as this section.

CONTRACTUAL OFFSET ARRANGEMENTS; CONGRESSIONAL STATEMENT OF FINDINGS

Section 825(a) of Pub. L. 100–456 provided that: ''Congress makes the following findings:

''(1) Many contracts entered into by United States firms for the supply of weapon systems or defense-related items to foreign countries and foreign firms are subject to contractual arrangements under which United States firms must agree—

''(A) to have a specified percentage of work under, or monetary amount of, the contract performed by one or more foreign firms;

''(B) to purchase a specified amount or quantity of unrelated goods or services from domestic sources of such foreign countries; or

''(C) to invest a specified amount in domestic businesses of such foreign countries.

Such contractual arrangements, known as 'offsets', are a component of international trade and could have an impact on United States defense industry opportunities in domestic and foreign markets.

''(2) Some United States contractors and subcontractors may be adversely affected by such contractual arrangements.

''(3) Many contracts which provide for or are subject to offset arrangements require, in connection with such arrangements, the transfer of United States technology to foreign firms.

''(4) The use of such transferred technology by foreign firms in conjunction with foreign trade practices permitted under the trade policies of the countries of such firms can give foreign firms a competitive advantage against United States firms in world markets for products using such technology.

''(5) A purchase of defense equipment pursuant to an offset arrangement may increase the cost of the defense equipment to the purchasing country and may reduce the amount of defense equipment that a country may purchase.

''(6) The exporting of defense equipment produced in the United States is important to maintain the defense industrial base of the United States, lower the unit cost of such equipment to the Department of Defense, and encourage the standardized utilization of United States equipment by the allies of the United States.''

NEGOTIATIONS WITH COUNTRIES REQUIRING OFFSET ARRANGEMENTS

Section 825(c) of Pub. L. 100–456, as amended by Pub. L. 101–189, div. A, title VIII, § 816, Nov. 29, 1989, 103 Stat. 1501, provided that:

''(1) The President shall enter into negotiations with foreign countries that have a policy of requiring an offset arrangement in connection with the purchase of defense equipment or supplies from the United States. The negotiations should be conducted with a view to achieving an agreement with the countries concerned that would limit the adverse effects that such arrangements have on the defense industrial base of each such country. Every effort shall be made to achieve such agreements within two years after September 29, 1988.

''(2) In the negotiation or renegotiation of any memorandum of understanding between the United States and one or more foreign countries relating to the reciprocal procurement of defense equipment and supplies or research and development, the President shall make every effort to achieve an agreement with the country or countries concerned that would limit the adverse effects that offset arrangements have on the defense industrial base of the United States.''

[For delegation of functions of President under section 825(c) of Pub. L. 100–456 to Secretary of Defense and United States Trade Representative, see section 5–201 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

REPORT TO CONGRESS ON OFFSET ARRANGEMENTS REQUIRED BY FOREIGN COUNTRIES AND FIRMS; DISCUSSION OF POLICY OPTIONS

Section 825(d) of Pub. L. 100–456 provided that:

''(1) Not later than November 15, 1988, the President shall submit to Congress a comprehensive report on

contractual offset arrangements required of United States firms for the supply of weapon systems or defense-related items to foreign countries or foreign firms. Such report shall include, at a minimum, the following:

''(A) An analysis of the amount and type of contractual offsets required of United States firms by the governments of foreign countries or by foreign firms.

''(B) An assessment of the benefits for and costs to United States manufacturers of defense products at all tiers that result from requirements of foreign governments for contractual offset arrangements in the case of products procured from United States firms.

''(C) An assessment of the benefits for and the costs to United States manufacturers of defense products at all tiers that would result from restriction of the ability of foreign governments or foreign firms to require contractual offsets in the case of defense products procured from United States firms.

''(D) An assessment of the benefits and costs of a United States policy that requires reciprocal offsets in the procurement of defense products from those countries whose governments have a policy of requiring contractual offsets in the case of defense products procured from United States firms.

''(E) An assessment of the impact that elimination of contractual offset requirements in international sales of defense products would have on the national security of the United States.

''(F) Recommendations for a national policy with respect to contractual offset arrangements.

''(G) A preliminary discussion of the actions referred to in paragraph (2).

''(2) Not later than March 15, 1990, the President shall transmit to Congress a report containing a discussion of appropriate actions to be taken by the United States with respect to purchases from United States firms by a foreign country (or a firm of that country) when that country or firm requires an offset arrangement in connection with the purchase of defense equipment or supplies in favor of such country. The report shall include a discussion of the following possible actions:

''(A) A requirement for an offset in favor of the United States or United States firms in any case in which the Department of Defense or any other department or agency of the United States purchases goods from such foreign country or a firm of such country.

''(B) A demand for offset credits from such foreign country to be used, to the extent practicable, to meet offset obligations of United States firms to such foreign country or to a firm of such country.

''(C) A reduction in assistance furnished such foreign country by the United States.

''(D) A requirement for alternative equivalent advantages in the case of any such foreign country or a firm of such country if the United States does not purchase a sufficient volume of goods from such country or firm for a requirement described in subparagraph (A) to be effective.

''(3) The President shall report to Congress at least once each year, for a period of 4 years, on the progress of the negotiations referred to in subsection (c) [set out above]. The first such report shall be submitted not later than one year after the date of the enactment of this Act [Sept. 29, 1988].

''(4) In this subsection, the terms 'United States firm' and 'foreign firm' have the same meanings as are provided in section 2505(d) [now 2532(d)] of title 10, United States Code, as added by subsection (b).''

[For delegation of functions of President under section 825(d) of Pub. L. 100–456 to Director of Office of Management and Budget, see section 5–202 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2534 of this title.

§2533. Determinations of public interest under the Buy American Act

(a) In determining under section 2 of title III of the Act of March 3, 1993[1] (41 U.S.C. 10a), popularly known as the ''Buy American Act'', whether application of title III of such Act is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term ''goods which are other than American goods'' means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured outside the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100–370, §3(a)(1), July 19, 1988, 102 Stat. 855, §2501; renumbered §2506, Pub. L. 100–456, div. A, title VIII, §821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered §2533, Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659; Pub. L. 103–337, div. A, title VIII, §812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 93–365, title VII, §707, Aug. 5, 1974, 88 Stat. 406.

[1] See References in Text note below.

REFERENCES IN TEXT

Title III of the Act of March 3, 1993, popularly known as the ''Buy American Act'', referred to in subsec. (a), probably means title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, 10b–1, and 10c of Title 41, Public Contracts, and enacted provisions set out as notes under section 10c of Title 41. Section 2 of the Act is classified to section 10a of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

AMENDMENTS

1994—Pub. L. 103–337, § 812(b)(1), substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' as section catchline.

Subsec. (a). Pub. L. 103–337, § 812(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Funds appropriated to the Department of Defense may not be obligated under a contract for procurement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

''(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

''(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

''(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

''(4) The United States balance of payments.

''(5) The cost of shipping goods which are other than American goods.

''(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.''

Subsecs. (b), (c). Pub. L. 103–337, § 812(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the 'Buy American Act'.''

1992—Pub. L. 102–484 renumbered section 2506 of this title as this section.

§ 2534. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

(2) CHEMICAL WEAPONS ANTIDOTE.—Chemical weapons antidote contained in automatic injectors (and components for such injectors).

(3) AIR CIRCUIT BREAKERS.—Air circuit breakers for naval vessels.

(4) VALVES AND MACHINE TOOLS.—Items in the following categories:

(A) Powered and non-powered valves in Federal Supply Classes 4810 and 4820 used in piping for naval surface ships and submarines.

(B) Machine tools in the Federal Supply Classes for metal-working machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(5) BALL BEARINGS AND ROLLER BEARINGS.—Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

(1) GENERAL REQUIREMENT.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) MANUFACTURERS OF CHEMICAL WEAPONS ANTIDOTE.—In the case of a procurement of chemical weapons antidote referred to in subsection (a)(2), a manufacturer meets the requirements of this subsection only if the manufacturer—

(A) meets the requirement set forth in paragraph (1);

(B) is an existing producer under the industrial preparedness program at the time the contract is awarded;

(C) has received all required regulatory approvals; and

(D) when the contract for the procurement is awarded, has in existence in the national technology and industrial base the plant, equipment, and personnel necessary to perform the contract.

(c) APPLICABILITY TO CERTAIN ITEMS.—

(1) AIR CIRCUIT BREAKERS.—Subsection (a) does not apply to a procurement of spares or repair parts needed to support air circuit breakers produced or manufactured outside the United States.

(2) VALVES AND MACHINE TOOLS.—(A) Contracts to which subsection (a) applies include the following contracts for the procurement of items described in paragraph (4) of such subsection:

(i) A contract for procurement of such an item for use in property under the control of the Department of Defense, including any Government-owned, contractor-operated facility.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the procurement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) BALL BEARINGS AND ROLLER BEARINGS.—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 1995.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item list-

ed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2491(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) DEFINITION.—In this subsection, the term ''United States firm'' has the meaning given such term in section 2532(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(Added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1294, § 2400; amended Pub. L. 100–180, div. A, title I, § 124(a), (b)(1), title VIII, § 824(a), Dec. 4, 1987, 101 Stat. 1042, 1043, 1134; renumbered § 2502 and amended Pub. L. 100–370, § 3(b)(1), July 19, 1988, 102 Stat. 855; renumbered § 2507 and amended Pub. L. 100–456, div. A, title VIII, §§ 821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; Pub. L. 101–510, div. A, title VIII, § 835(a), title XIV, § 1421, Nov. 5, 1990, 104 Stat. 1614, 1682; Pub. L. 102–190, div. A, title VIII, §§ 834, 835, Dec. 5, 1991, 105 Stat. 1447, 1448; renumbered § 2534 and amended Pub. L. 102–484, div. A, title VIII, §§ 831, 833(a), title X, § 1052(33), div. D, title XLII, §§ 4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title VIII, § 814, Oct. 5, 1994, 108 Stat. 2817; Pub. L. 103–355, title IV, § 4102(i), Oct. 13, 1994, 108 Stat. 3341.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2400	10:2303 (note).	Sept. 20, 1968, Pub. L. 90–500, § 404, 82 Stat. 851.

The words ''of the United States under the provisions of this Act or the provisions of any other law'' are omitted as surplus. The word ''acquisition'' is substituted for ''purchase, lease, rental, or other acquisition'' because it is inclusive. The words ''this section'' are substituted for ''this prohibition'' because of the restatement.

AMENDMENTS

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to acquisition of multipassenger motor vehicles, chemical weapons antidote, valves and machine tools, carbonyl iron powders, air circuit breakers, and sonobuoys.

Subsec. (g). Pub. L. 103–355 added subsec. (g).

1993—Subsec. (b)(2). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Pub. L. 102–484, §§ 4202(a), 4271(b)(4), renumbered section 2507 of this title as this section and substituted ''Miscellaneous limitations on the procurement of goods other than United States goods'' for ''Miscellaneous procurement limitations'' in section catchline.

Subsec. (c). Pub. L. 102–484, § 831, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''MANUAL TYPEWRITERS FROM WARSAW PACT COUNTRIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the procurement of manual typewriters which contain one or more components manufactured in a country which is a member of the Warsaw Pact unless the products of that country are accorded nondiscriminatory treatment (most-favored-nation treatment).''

Subsec. (d). Pub. L. 102–484, § 831(b), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3)(A). Pub. L. 102–484, § 1052(33), substituted ''Government-owned'' for ''government-owned''.

Subsec. (e). Pub. L. 102–484, § 831(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 102–484, § 833(a), added subsec. (f). Former subsec. (f) redesignated (e).

1991—Subsec. (d)(1). Pub. L. 102–190, § 834(a), substituted ''Effective through fiscal year 1996'' for ''During fiscal years 1989, 1990, and 1991''.

Subsec. (d)(3) to (5). Pub. L. 102–190, § 834(b), added pars. (3) and (4), redesignated former par. (3) as (5), and struck out former par. (4) which read as follows: ''The provisions of this section may be renewed with respect to any item by the Secretary of Defense at the end of fiscal year 1991 for an additional two fiscal years if the Secretary determines that a continued restriction on that item is in the national security interest.''

Subsec. (e)(1). Pub. L. 102–190, § 835(1), substituted ''Until January 1, 1993, the Secretary'' for ''The Secretary''.

Subsec. (e)(3). Pub. L. 102–190, § 835(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''After September 30, 1994, the Secretary may terminate the restriction required under paragraph (1) if the Secretary determines that continuing the restriction is not in the national interest.''

Subsec. (e)(3)(A). Pub. L. 102–190, § 835(3), struck out before period ''by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada''.

Subsec. (e)(4). Pub. L. 102–190, § 835(4), redesignated par. (4) as (3).

1990—Subsec. (e). Pub. L. 101–510, § 835(a), added subsec. (e).

Subsec. (f). Pub. L. 101–510, § 1421, added subsec. (f).

1988—Pub. L. 100–370, and Pub. L. 100–456, § 821(b)(1)(A), successively renumbered section 2400 of this title as section 2502 of this title and then as this section.

Subsec. (a). Pub. L. 100–370 substituted ''this subsection'' for ''this section''.

Subsec. (d). Pub. L. 100–456, § 822, added subsec. (d).

1987—Pub. L. 100–180 substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in section catchline, designated existing provisions as subsec. (a) and added heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 833(b) of Pub. L. 102–484 provided that: ''Subsection (f) of section 2534 of title 10, United States Code, as added by subsection (a), shall apply with respect to solicitations for contracts issued after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 835(b) of Pub. L. 101–510 provided that subsec. (e) of this section, as added by section 835(a) of Pub. L. 101–510, applied with respect to systems or items procured by or provided to Department of Defense after Nov. 5, 1990.

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress (1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the Armed Forces in time of national emergency or in anticipation thereof; (2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible; (3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and (4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in this section, the Secretary is authorized and directed to—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the defense industrial reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) and any other provision of law, authorize the transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term ''Secretary'' means Secretary of Defense.

(2) The term ''Defense Industrial Reserve'' means (A) a general reserve of industrial manufacturing equipment, including machine

tools, selected by the Secretary of Defense for retention for national defense or for other emergency use; (B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; (C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(3) The term ''plant equipment package'' means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102–484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690; Pub. L. 103–35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103–337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(1)(G), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title II of the Act, is classified principally to subchapter II (§ 481 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

CODIFICATION

The text of section 451 of Title 50, War and National Defense, which was transferred to this section, designated subsec. (a), and amended by Pub. L. 102–484, § 4235(a)(2), was based on acts July 2, 1948, ch. 811, § 2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

The text of section 453 of Title 50 which was transferred to this section, designated subsec. (b), and amended by Pub. L. 102–484, § 4235(a)(3), was based on acts July 2, 1948, ch. 811, § 4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1359(a), 100 Stat. 3999. For effective date of 1986 amendment, see section 1359(b) of Pub. L. 99–661.

The text of section 452 of Title 50 which was transferred to this section, designated subsec. (c), and amended by Pub. L. 102–484, § 4235(b), was based on acts July 2, 1948, ch. 811, § 3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

AMENDMENTS

1994—Subsec. (b)(1)(G). Pub. L. 103–337 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''authorize and regulate the lending of any such property to any nonprofit educational institution or training school whenever (i) the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (ii) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance and care of such property and for its return, without expense to the Government, upon request of the Secretary.''

1993—Subsec. (b)(2)(B). Pub. L. 103–35 substituted ''subparagraph (A)'' for ''paragraph (1)''.

1992—Pub. L. 102–484, § 4235(a), added section number and catchline.

Subsec. (a). Pub. L. 102–484, § 4235(a)(2), transferred the text of section 451 of Title 50, War and National Defense, to this section, designated it subsec. (a), inserted heading, and substituted ''It'' for ''In enacting this chapter it'' in introductory provisions. See Codification note above.

Subsec. (b). Pub. L. 102–484, § 4235(a)(3), transferred the text of section 453 of Title 50, War and National Defense, to the end of this section and designated it subsec. (b), inserted heading, redesignated former subsec. (a) of section 453 as par. (1), substituted ''in this section'' for ''in this chapter'' in introductory provisions, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, in subpar. (G) redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subsec. (b) of section 453 as par. (2), and in par. (2) redesignated former par. (1) as subpar. (A), former subpars. (A) to (C) as cls. (i) to (iii), and former par. (2) as subpar. (B). See Codification note above.

Subsec. (c). Pub. L. 102–484, § 4235(b), transferred the text of section 452 of Title 50, War and National Defense, to the end of this section, designated it subsec. (c), inserted heading, and substituted ''In this section:'' for ''As used in this chapter—'' in introductory provisions. See Codification note above.

TREATMENT OF PROPERTY LOANED BEFORE DECEMBER 31, 1993 TO EDUCATIONAL INSTITUTIONS OR TRAINING SCHOOLS

Section 379(b) of Pub. L. 103–337 provided that: ''Except for property determined by the Secretary of Defense to be needed by the Department of Defense, property loaned before December 31, 1993, to an educational institution or training school under section 2535(b) of title 10, United States Code, or section 4(a)(7) of the Defense Industrial Reserve Act (as in effect before October 23, 1992 [former section 453(a)(7) of Title 50, War and National Defense, see Codification and 1992 Amendment notes above]) shall be regarded as surplus property. Upon certification by the Secretary to the Administrator of General Services that the property is being used by the borrowing educational institution or training school for a purpose consistent with that for which the property was loaned, the Administrator may authorize the conveyance of all right, title, and interest of the United States in such property to the borrower if the borrower agrees to accept the property. The Administrator may require any additional terms and conditions in connection with a conveyance so authorized that the Administrator considers appropriate to protect the interests of the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2506 of this title.

§ 2536. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—The Secretary concerned may waive the application of subsection (a) to a contract award if the Secretary concerned determines that the waiver is essential to the national security interests of the United States.

(c) DEFINITIONS.—In this section:

(1) The term ''entity controlled by a foreign government'' includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term ''proscribed category of information'' means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(3) The term ''Secretary concerned'' means—

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

(Added Pub. L. 102–484, div. A, title VIII, § 836(a)(1), Oct. 23, 1992, 106 Stat. 2462; amended Pub. L. 103–35, title II, § 201(d)(4), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title VIII, § 842(a)–(c)(1), Nov. 30, 1993, 107 Stat. 1719.)

AMENDMENTS

1993—Pub. L. 103–160, § 842(c)(1), substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government.'' as section catchline.

Pub. L. 103–35 struck out period at end of section catchline.

Subsec. (a). Pub. L. 103–160, § 842(a), struck out ''a company owned by'' after ''awarded to'' and substituted ''that entity'' for ''that company''.

Subsec. (c)(1). Pub. L. 103–160, § 842(b), inserted at end ''Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 836(b) of Pub. L. 102–484 provided that: ''Section 2536 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

§ 2537. Improved national defense control of technology diversions overseas

(a) COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.—The Secretary of Defense and the Secretary of Energy shall each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding $100,000 in any single year by the Department of Defense or the Department of Energy.

(b) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall submit to the Congress, by March 31 of each year, beginning in 1994, a report containing a summary and analysis of the information collected under subsection (a) for the year covered by the report. The report shall include an analysis of accumulated foreign ownership of United States firms engaged in the development of defense critical technologies.

(c) TECHNOLOGY RISK ASSESSMENT REQUIREMENT.—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(a)) and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

(2) The entities referred to in paragraph (1) are the following:

(A) The Defense Intelligence Agency.

(B) The Army Foreign Technology Science Center.

(C) The Naval Maritime Intelligence Center.

(D) The Air Force Foreign Aerospace Science and Technology Center.

(Added Pub. L. 102–484, div. A, title VIII, § 838(a), Oct. 23, 1992, 106 Stat. 2465; amended Pub. L. 103–35, title II, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–35, § 201(d)(5), substituted ''respectively, that'' for ''respectively, which''.

Subsec. (d). Pub. L. 103–35, § 201(h)(2), struck out subsec. (d) which read as follows: ''In this section, the term 'defense critical technology' has the meaning provided that term by section 2491(8) of this title.''

§ 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations

(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the head of any department, may order from any

person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) SEIZURE OF MANUFACTURING PLANTS UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or

(3) to furnish them at a reasonable price as determined by the head of such department.

(d) USE OF SEIZED PLANT.—The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; amended Pub. L. 103–337, div. A, title VIII, § 811, Oct. 5, 1994, 108 Stat. 2815.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in sections 4501 and 9501 of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, § 811, substituted ''through the head of any department'' for ''through the Secretary of Defense'' and ''opinion of the head of that department'' for ''opinion of the Secretary of Defense'' in introductory provisions and ''head of such department'' for ''Secretary'' in pars. (2) and (3).

Subsec. (d). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2539a of this title.

§ 2539. Industrial mobilization: plants; lists

(a) LIST OF PLANTS EQUIPPED TO MANUFACTURE ARMS OR AMMUNITION.—The Secretary of Defense may maintain a list of all privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) LIST OF PLANTS CONVERTIBLE INTO AMMUNITION FACTORIES.—The Secretary of Defense may maintain a list of privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may obtain complete information as to the equipment of each of those plants.

(c) CONVERSION PLANS.—The Secretary of Defense may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in sections 4502(a)–(c) and 9502(a)–(c) of this title prior to repeal by Pub. L. 103–160, § 822(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2539a of this title.

§ 2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness

The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary clerical assistance, to organize and coordinate operations under sections 2538 and 2539 of this title.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705, § 2540; renumbered § 2539a, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in sections 4502(d) and 9502(d) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2540 of this title as this section.

§ 2539b. Availability of samples, drawings, information, equipment, materials, and certain services

(a) AUTHORITY.—The Secretary of Defense and the secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell[1] rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government; and

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items.

(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) FEES.—Fees for services made available under subsection (a)(3) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) USE OF FEES.—Fees received for services made available under subsection (a)(3) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103–160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103–355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333.)

PRIOR PROVISIONS

Prior sections 2540 and 2541 were renumbered sections 2539a and 2539b of this title, respectively.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2541 of this title as this section.

Subsec. (a)(1). Pub. L. 103–355 inserted ''rent,'' after ''sell,''.

Subsec. (a)(2). Pub. L. 103–355, which directed amendment of par. (2) by inserting ''rent,'' after ''sell,'', was executed by inserting ''rent,'' after ''sell'' to reflect the probable intent of Congress.

CHAPTER 152—ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

Subchapter		Sec.
I.	Issue to the Armed Forces	2540
II.	Issue of Serviceable Material Other Than to the Armed Forces	2541

SUBCHAPTER I—ISSUE TO THE ARMED FORCES

Sec.
[2540. Repealed.]

[1] So in original. Probably should be followed by a comma.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(14), Oct. 5, 1994, 108 Stat. 3014, struck out item 2540 ''Reserve components: supplies, services, and facilities''.

1991—Pub. L. 102–190, div. A, title VIII, § 821(e)(2), Dec. 5, 1991, 105 Stat. 1431, substituted ''152'' for ''150'' as chapter number, ''ISSUE OF SUPPLIES, SERVICES, AND FACILITIES'' for ''ISSUE TO ARMED FORCES'' as chapter heading, added subchapter analysis and subchapter I heading, and renumbered item 2521 as 2540.

1990—Pub. L. 101–510, div. A, title VIII, § 823(a)(1), (b)(2), Nov. 5, 1990, 104 Stat. 1600, 1602, substituted ''150'' for ''149'' as chapter number and renumbered item 2511 as 2521.

CROSS REFERENCES

Issue of serviceable material to—

Air Force, see section 9561 et seq. of this title.

Army, see section 4561 et seq. of this title.

Property records, basis and reports, see section 2721 of this title.

[§ 2540. Repealed. Pub. L. 103–337, div. A, title XVI, § 1664(c)(2), Oct. 5, 1994, 108 Stat. 3012]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2511; renumbered § 2521, Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 823(a)(2), 104 Stat. 1600; renumbered § 2540, Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 821(e)(3), 105 Stat. 1432, related to availability or issuance to reserve components of supplies, services, and facilities of armed forces. See section 18502 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SUBCHAPTER II—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO THE ARMED FORCES

Sec.
2541. Equipment and barracks: national veterans' organizations.
2542. Equipment for instruction and practice: American National Red Cross.
2543. Equipment: Inaugural Committee.
2544. Equipment and other services: Boy Scout Jamborees.
2545. Transportation services: international Girl Scout events.
2546. Shelter for homeless; incidental services.
2547. Excess nonlethal supplies: humanitarian relief.
2548. National military associations: assistance at national conventions.
2549. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services.
2550. Aircraft and vehicles: limitation on leasing to non-Federal agencies.
2551. Humanitarian assistance.
2552. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs.
2553. Articles and services of industrial facilities: sale to persons outside the Department of Defense.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title III, § 339(a)(2), Oct. 5, 1994, 108 Stat. 2720, added item 2553.

1992—Pub. L. 102–484, div. A, title III, § 304(c)(2), div. D, title XLIII, § 4304(b), Oct. 23, 1992, 106 Stat. 2362, 2700, added items 2551 and 2552.

1991—Pub. L. 102–190, div. A, title VIII, § 821(e)(1), Dec. 5, 1991, 105 Stat. 1431, substituted subchapter II heading for former chapter 151 heading ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES''.

1990—Pub. L. 101–510, div. A, title XIV, § 1481(f)(2), (g)(2), Nov. 5, 1990, 104 Stat. 1707, added items 2549 and 2550.

1989—Pub. L. 101–189, div. A, title III, § 329(a)(2), Nov. 29, 1989, 103 Stat. 1417, added item 2548.

1985—Pub. L. 99–145, title XIV, § 1454(b), Nov. 8, 1985, 99 Stat. 761, added item 2547.

1983—Pub. L. 98–94, title III, § 305(a)(2), Sept. 24, 1983, 97 Stat. 629, added item 2546.

1978—Pub. L. 95–492, § 2, Oct. 20, 1978, 92 Stat. 1642, added item 2545.

1972—Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, added item 2544.

1958—Pub. L. 85–861, § 1(48)(B), Sept. 2, 1958, 72 Stat. 1459, added item 2543.

CROSS REFERENCES

Naval supplies and services, furnishing and sale to—
Foreign naval vessels and aircraft, see section 7227 of this title.
Merchant vessels, see section 7228 et seq. of this title.
Particular provisions relating to—
Air Force, see section 9651 et seq. of this title.
Army, see section 4651 et seq. of this title.
Property records, basis and reports, see section 2721 of this title.

§ 2541. Equipment and barracks: national veterans' organizations

(a) The Secretary of a military department, under conditions prescribed by him, may lend cots, blankets, pillows, mattresses, bed sacks, and other supplies under the jurisdiction of that department to any recognized national veterans' organization for use at its national or state convention or national youth athletic or recreation tournament. He may, under conditions prescribed by him, also permit the organization to use unoccupied barracks under the jurisdiction of that department for such an occasion.

(b) Property lent under subsection (a) may be delivered on terms and at times agreed upon by the Secretary of the military department concerned and representatives of the veterans' organization. However, the veterans' organization must defray any expense incurred by the United States in the delivery, return, rehabilitation, or replacement of that property, as determined by the Secretary.

(c) The Secretary of the military department concerned shall require a good and sufficient bond for the return in good condition of property lent or used under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 142.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2541(a)	5:150m.	Aug. 1, 1949, ch. 372, 63 Stat. 483.
2541(b)	5:150n.	
2541(c)	5:150*o*.	

In subsection (a), the word ''may'' is substituted for the words ''are authorized to * * * at their discretion''. The word ''supplies'' is substituted for the words ''articles or equipment''. The words ''available'' and ''as may be needed'' are omitted as surplusage. The words ''under the jurisdiction of that department'' are substituted for the words ''of the Army, Navy, or Air Force'' and ''under their respective jurisdictions''.

In subsection (b), the words ''prior to any such conventions or national youth athletic or recreation tournaments'' are omitted as surplusage.

In subsection (c), the words ''require of'' are substituted for the words ''take from''.

§ 2542. Equipment for instruction and practice: American National Red Cross

The Secretary of a military department, under regulations to be prescribed by him, may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war. The Secretary shall by regulation require the immediate return, upon request, of equipment lent under this section. The Secretary shall require a bond, in double the value of the property issued under this section, for the care and safekeeping of that property and for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 142.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2542	10:1255. 10:1256. 34:549. 34:550.	May 8, 1914, J. Res. 15, 38 Stat. 771.

The word ''may'' is substituted for the words ''is authorized * * * at his discretion'', in 10:1255 and 34:549. The word ''lend'' is substituted for the word ''issue'', in 10:1255 and 34:549. The words ''proper'', ''to be'', ''out of equipment for medical or other establishments'', and ''belonging to the Government'', in 10:1255 and 34:549, are omitted as surplusage. The words ''that needs it'' are substituted for the words ''as may appear to be required''. The words ''under the jurisdiction of that department'' are inserted for clarity. The words ''upon request'' are substituted for the words ''when called for by the authority which issued them''.

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Cooperation and assistance to armed forces by American National Red Cross, see section 2602 of this title.

Sale of medical supplies and ordnance property to American National Red Cross, see sections 4624, 4625, 9624, 9625 of this title.

§ 2543. Equipment: Inaugural Committee

(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721), hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

(b) The Inaugural Committee must give a good and sufficient bond for the return in good order and condition of property lent under subsection (a).

(c) Property lent under subsection (a) shall be returned within nine days after the date of the ceremony inaugurating the President. The Inaugural Committee shall—

(1) indemnify the United States for any loss of, or damage to, property lent under subsection (a); and

(2) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.

(Added Pub. L. 85–861, § 1(48)(A), Sept. 2, 1958, 72 Stat. 1458; amended Pub. L. 96–513, title V, § 511(81), Dec. 12, 1980, 94 Stat. 2927.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2543(a)	36:726 (1st sentence).	Aug. 6, 1956, ch. 974, §§ 1(b)(1) (as applicable to § 6), 6, 70 Stat. 1049, 1050.
2543(b)	36:726 (less 1st and 2d sentences).	
2543(c).	36:721(b)(1) (as applicable to 36:726).	
	36:726 (2d sentence).	

In subsection (a), the words ''under section 721 of title 36'' are inserted for clarity. The words ''ensigns'' and ''Red Cross flags'' are omitted as covered by the word ''flags''.

In subsection (b), the words ''and the whole without expense to the United States'' are omitted as surplusage.

In subsection (c), the words ''nine days after the date of the ceremony inaugurating the President'' are substituted for the words ''five days after the end of the inaugural period'', in 36:726 (2d sentence), and 36:721(b)(1).

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)'' for ''section 721 of title 36''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2544. Equipment and other services: Boy Scout Jamborees

(a) The Secretary of Defense is hereby authorized, under such regulations as he may prescribe, to lend to the Boy Scouts of America, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, such cots, blankets, commissary equipment, flags, refrigerators, and other equipment and without reimbursement, furnish services and expendable medical supplies, as may be necessary or useful to the extent that items are in stock and items or services are available.

(b) Such equipment is authorized to be delivered at such time prior to the holding of any national or world Boy Scout Jamboree, and to be returned at such time after the close of any such jamboree, as may be agreed upon by the Secretary of Defense and the Boy Scouts of America. No expense shall be incurred by the United States Government for the delivery, return, rehabilitation, or replacement of such equipment.

(c) The Secretary of Defense, before delivering such property, shall take from the Boy Scouts of America, good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States.

(d) The Secretary of Defense is hereby authorized under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Military Airlift Command for (1) those Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree, and (2) the equipment and property of such Boy Scouts, Scouters, and officials and the property loaned to the Boy Scouts of America, by the Secretary of Defense pursuant to this section to the extent that such transportation will not interfere with the requirements of military operations.

(e) Before furnishing any transportation under subsection (d), the Secretary of Defense shall take from the Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States by the Boy Scouts of America, of the actual costs of transportation furnished under this section.

(f) Amounts paid to the United States to reimburse it for expenses incurred under subsection (b) and for the actual costs of transportation furnished under subsection (d) shall be credited to the current applicable appropriations or funds to which such expenses and costs were charged and shall be available for the same purposes as such appropriations or funds.

(g) Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America, equipment and other services, under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense.

(Added Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62.)

§ 2545. Transportation services: international Girl Scout events

(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Military Airlift Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl

Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

(Added Pub. L. 95–492, §1, Oct. 20, 1978, 92 Stat. 1642.)

§2546. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.

(2) Bedding.

(3) Security.

(4) Transportation.

(5) Renovation of facilities.

(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.

(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 98–94, title III, §305(a)(1), Sept. 24, 1983, 97 Stat. 628; amended Pub. L. 99–167, title VIII, §825, Dec. 3, 1985, 99 Stat. 992.)

AMENDMENTS

1985—Subsecs. (d), (e). Pub. L. 99–167 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Section 305(b) of Pub. L. 98–94 provided that: ''Section 2546 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

§2547. Excess nonlethal supplies: humanitarian relief

(a) The Secretary of Defense may make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense.

(b) Excess supplies made available for humanitarian relief purposes under this section shall be transferred to the Secretary of State, who shall be responsible for the distribution of such supplies.

(c) This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the intelligence committees under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(d) In this section:

(1) The term ''nonlethal excess supplies'' means property, other than real property, of the Department of Defense—

(A) that is excess property, as defined in regulations of the Department of Defense; and

(B) that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death.

(2) The term ''intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(Added Pub. L. 99–145, title XIV, §1454(a), Nov. 8, 1985, 99 Stat. 761; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, §1322(a)(10), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–88, title VI, §602(c)(3), Aug. 14, 1991, 105 Stat. 444.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–88 struck out par. (1) which read as follows: ''a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or'', struck out par. (2) designation, and substituted ''title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)'' for ''section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)''.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(1) The Secretary of State shall submit an annual report on the disposition of all excess supplies transferred by the Secretary of Defense to the Secretary of State under this section during the preceding year.

''(2) Such reports shall be submitted to the Committees on Armed Services and on Foreign Relations of the Senate and the Committees on Armed Services and on Foreign Affairs of the House of Representatives.

''(3) Such reports shall be submitted not later than June 1 of each year.''

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2551, 2552 of this title.

§ 2548. National military associations: assistance at national conventions

(a) AUTHORITY TO PROVIDE SERVICES.—The Secretary of a military department may provide services described in subsection (c) in connection with an annual conference or convention of a national military association.

(b) CONDITIONS FOR PROVIDING SERVICES.—Services may be provided under this section only if—

(1) the provision of the services in any case is approved in advance by the Secretary concerned;

(2) the services can be provided in conjunction with training in appropriate military skills; and

(3) the services can be provided within existing funds otherwise available to the Secretary concerned.

(c) COVERED SERVICES.—Services that may be provided under this section are—

(1) limited air and ground transportation;

(2) communications;

(3) medical assistance;

(4) administrative support; and

(5) security support.

(d) NATIONAL MILITARY ASSOCIATIONS.—The Secretary of Defense shall designate those organizations which are national military associations for purposes of this section.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title III, § 329(a)(1), Nov. 29, 1989, 103 Stat. 1417.)

EFFECTIVE DATE

Section 329(b) of Pub. L. 101–189 provided that: ''Section 2548 of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].''

§ 2549. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services

(a) REIMBURSEMENT REQUIRED.—Except as provided in subsection (b), whenever the Secretary of Defense provides medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents, the Secretary shall require that the United States be reimbursed for the costs of providing such care. Payments received as reimbursement for the provision of such care shall be credited to the appropriations against which charges were made for the provision of such care.

(b) WAIVER WHEN RECIPROCAL SERVICES PROVIDED UNITED STATES MILITARY PERSONNEL.—Notwithstanding subsection (a), the Secretary of Defense may provide inpatient medical care in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel and their dependents in that foreign country.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(f)(1), Nov. 5, 1990, 104 Stat. 1707.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, § 9020, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(f)(3).

§ 2550. Aircraft and vehicles: limitation on leasing to non-Federal agencies

The Secretary of Defense (or Secretary of a military department) may not lease to a non-Federal agency in the United States any aircraft or vehicle owned or operated by the Department of Defense if suitable aircraft or vehicles are commercially available in the private sector. However, nothing in the preceding sentence shall affect authorized and established procedures for the sale of surplus aircraft or vehicles.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(g)(1), Nov. 5, 1990, 104 Stat. 1707.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, § 9025, Nov. 21, 1989, 103 Stat. 1134, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(g)(4).

§ 2551. Humanitarian assistance

(a) AUTHORIZED ASSISTANCE.—To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

(b) AUTHORITY TO TRANSFER FUNDS.—To the extent provided in defense authorization Acts for a fiscal year, the Secretary of Defense may transfer to the Secretary of State funds appropriated for the purposes of this section to provide for—

(1) the payment of administrative costs incurred in providing the transportation described in subsection (a); and

(2) the purchase or other acquisition of transportation assets for the distribution of humanitarian relief supplies in the country of destination.

(c) TRANSPORTATION OF HUMANITARIAN RELIEF.—(1) Transportation of humanitarian relief provided with funds appropriated for the purposes of this section shall be provided under the direction of the Secretary of State.

(2) Such transportation shall be provided by the most economical commercial or military means available, unless the Secretary of State determines that it is in the national interest of the United States to provide such transportation other than by the most economical means available. The means used to provide such transportation may include the use of aircraft and personnel of the reserve components of the Armed Forces.

(3) Nothing in this subsection shall be construed as waiving the requirements of section 2631 of this title and sections 901(b) and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) and 1241f).

(d) AVAILABILITY OF FUNDS.—To the extent provided in appropriation Acts, funds appropriated for humanitarian assistance for the purposes of this section shall remain available until expended.

(e) STATUS REPORTS.—(1) The Secretary of Defense shall submit (at the times specified in paragraph (2)) to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report on the provision of humanitarian assistance pursuant to this section.

(2)(A) Whenever there is enacted a defense authorization Act that contains an authorization of appropriations for humanitarian assistance, a report referred to in paragraph (1) shall be submitted as provided in that paragraph not later than 60 days after the date of the enactment of that Act.

(B) In addition to reports submitted as provided in subparagraph (A), a report shall be submitted under paragraph (1) not later than June 1 of each year.

(3) Each report required by paragraph (1) shall cover all provisions of law, contained in defense authorization Acts, that authorize appropriations for humanitarian assistance to be available for the purposes of this section. A report submitted after the obligation of all amounts appropriated pursuant to such a provision of law shall not cover that provision of law.

(4) Subject to paragraph (3), a report required by paragraph (1) shall contain (as of the date on which the report is submitted) the following information:

(A) The total amount of funds obligated for humanitarian relief under this section.

(B) The number of scheduled and completed flights for purposes of providing humanitarian relief under this section.

(C) A description of any transfer of excess nonlethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2547 of this title. The description shall include the date of the transfer, to whom the transfer is made, the quantity of items transferred, the acquisition value of the items transferred, and the value of the items at the time of the transfer.

(f) REPORT REGARDING RELIEF FOR UNAUTHORIZED COUNTRIES.—In any case in which the Secretary of Defense provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law, the Secretary shall notify the Committees on Appropriations and on Armed Services of the Senate and House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives of the Secretary's intention to provide such transportation. The notification shall be submitted not less than 15 days before the commencement of such transportation.

(g) DEFINITION.—In this section, the term ''defense authorization Act'' means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including authorizations of appropriations for the activities described in paragraph (7) of section 114(a) of this title.

(Added Pub. L. 102–484, div. A, title III, §304(c)(1), Oct. 23, 1992, 106 Stat. 2361.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Foreign Affairs of House of Representatives changed to Committee on International Relations of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

NOTIFICATIONS REGARDING HUMANITARIAN RELIEF

Notification provided to appropriate congressional committees with respect to assistance under this section to include detailed description of items for which transportation is provided that are excess nonlethal supplies of Department of Defense, including quantity, acquisition value, and value at time of transportation of such items, see section 1504(c) of Pub. L. 103–160, set out in a Humanitarian and Civic Assistance note under section 401 of this title.

LAWS COVERED BY INITIAL REPORTS

Section 304(d) of Pub. L. 102–484 provided that: ''For purposes of subsection (e) of section 2551 of title 10, United States Code, as added by subsection (c), section 304 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1333), and the humanitarian relief laws referred to in subsection (f)(4) of section 304 of that Act (as in effect on the day before the date of the enactment of this Act [Oct. 23, 1992]) shall be considered as provisions of law that authorized appropriations for humanitarian assistance to be available for the purposes of section 2551 of title 10, United States Code.''

§2552. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs

(a) LIMITATION.—Excess construction or fire equipment from the stocks of the Department of Defense may be transferred to any foreign country or international organization pursuant to part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2301 et seq.) or section 21 of the Arms Export Control Act (22 U.S.C. 2761) only if—

(1) no department or agency of the Federal Government (other than the Department of Defense), no State, and no other person or entity eligible to receive excess or surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472 et seq.) submits to the Defense Reutilization and Marketing Service a request for such equipment during the period for which the Defense Reutilization and Marketing Service accepts such a request; or

(2) the President determines that the transfer is necessary in order to respond to an emergency for which the equipment is especially suited.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to limit the authority to transfer construction or fire equipment under section 2547 of this title.

(c) DEFINITION.—In this section, the term ''construction or fire equipment'' includes tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, pumpers, fuel and water tankers, crash trucks, utility vans, rescue trucks, ambulances, hook and ladder units, compressors, and miscellaneous fire fighting equipment.

(Added Pub. L. 102–484, div. D, title XLIII, § 4304(a), Oct. 23, 1992, 106 Stat. 2699.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Part II of the Act is classified generally to subchapter II (§ 2301 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. The surplus property provisions of that Act are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

§ 2553. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES.—The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) CONDITIONS FOR SALES.—A sale of articles or services may be made under this section only if—

(1) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(2) the purchaser agrees to hold harmless and indemnify the United States, except in any case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the articles or services;

(3) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(4) it is in the public interest to manufacture the articles or perform the services;

(5) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(6) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(d) METHODS OF SALE.—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) DEPOSIT OF PROCEEDS.—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) DEFINITIONS.—In this section:

(1) The term ''advance incremental funding'', with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term ''variable costs'', with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103–337, div. A, title III, § 339(a)(1), Oct. 5, 1994, 108 Stat. 2718.)

EFFECTIVE DATE

Section 339(b) of Pub. L. 103–337 provided that: ''Section 2553 of title 10, United States Code, as added by subsection (a), shall take effect on April 1, 1995.''

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of property and services.
2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange.
[2573. Repealed.]
2574. Armament: sale of individual pieces.
2575. Disposition of unclaimed property.
2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies.
2577. Disposal of recyclable materials.
2578. Vessels: transfer between departments.
2579. War booty: procedures for handling and retaining battlefield objects.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, § 1171(a)(2), Nov. 30, 1993, 107 Stat. 1766, added item 2579.

1988—Pub. L. 100–456, div. A, title III, § 324(b), Sept. 29, 1988, 102 Stat. 1954, substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in item 2572.

Pub. L. 100–370, § 1(k)(2), July 19, 1988, 102 Stat. 848, added item 2578.

1982—Pub. L. 97–214, § 6(b)(2), July 12, 1982, 96 Stat. 172, added item 2577.

1980—Pub. L. 96–513, title V, § 511(83)(B), Dec. 12, 1980, 94 Stat. 2927, struck out item 2573 ''Excess property: transfers to Canal Zone Government''.

1968—Pub. L. 90–500, title IV, § 403(b), Sept. 20, 1968, 82 Stat. 851, added item 2576.

1958—Pub. L. 85–861, § 1(50), Sept. 2, 1958, 72 Stat. 1459, substituted ''property'' for ''supplies'' in item 2571.

CROSS REFERENCES

Disposal of obsolete or surplus material—
Air Force, see section 9681 et seq. of this title.
Army, see section 4681 et seq. of this title.
Navy, see section 7541 et seq. of this title.

Property records, basis and reports, see section 2721 of this title.

§ 2571. Interchange of property and services

(a) If either of the Secretaries concerned requests it and the other approves, supplies and real estate may be transferred, without compensation, from one armed force to another.

(b) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, without reimbursement or transfer of funds.

(c) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization.

(d) No agency or official of the executive branch of the Federal Government may establish any regulation, program, or policy or take any other action which precludes, directly or indirectly, the Secretaries concerned from exercising the authority provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Sept. 2, 1958, Pub. L. 85–861, § 1(49), 72 Stat. 1459; Dec. 3, 1985, Pub. L. 99–167, title VIII, § 821, 99 Stat. 991.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a) [now (b)].	5:171t (less clause (2)).	Oct. 29, 1949, ch. 787, § 621, 63 Stat. 1020.
2571(b) [now (c)].	5:171t (clause 2)).	

In subsection (a), the words ''After June 30, 1949'' are omitted as executed. The words ''may perform work and services for, or furnish supplies to'' are substituted for the words ''services, work, supplies, materials, and equipment may be rendered or supplied'', since the word ''supplies'', as defined in section 101(26) of this title, includes ''equipment'' and ''material''. The words ''upon request'' are inserted for clarity.

In subsection (b), the words ''on a reimbursable or other basis as authorized by law'', ''to duty'', and ''naval'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a)	14:640.	June 15, 1955, ch. 142, 69 Stat. 134.

In subsection (a), the first 12 words are substituted for 14:640 (last 20 words). The words ''may be transferred'' are substituted for the words ''The interchange . . . is authorized'', since the words ''without compensation'' authorize a simple one-way transfer, while the word ''interchange'' normally means a mutual exchange. The words ''military stores . . . and equipment of every character'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title. The words ''armed force'' are substituted for the enumeration of the armed forces.

AMENDMENTS

1985—Subsec. (d). Pub. L. 99–167 added subsec. (d).

1958—Pub. L. 85–861, § 1(49)(A), substituted ''property'' for ''supplies'' in section catchline.

Subsecs. (a) to (c). Pub. L. 85–861, § 1(49)(B), (C), added subsec. (a) and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

§ 2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange

(a) The Secretary concerned may lend or give items described in subsection (c) that are not needed by the military department concerned (or by the Coast Guard, in the case of the Secretary of Transportation), to any of the following:

(1) A municipal corporation.

(2) A soldiers' monument association.

(3) A museum, historical society, or historical institution of a State or a foreign nation.

(4) An incorporated museum that is operated and maintained for educational purposes only and the charter of which denies it the right to operate for profit.

(5) A post of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association.

(6) A local or national unit of any war veterans' association of a foreign nation which is recognized by the national government of that nation (or by the government of one of the principal political subdivisions of that nation).

(7) A post of the Sons of Veterans Reserve.

(b)(1) Subject to paragraph (2), the Secretary concerned may exchange items described in subsection (c) that are not needed by the armed forces for similar items held by any individual, organization, institution, agency, or nation or for search, salvage, transportation, and restoration services which directly benefit the historical collection of the armed forces.

(2) The Secretary concerned may not make an exchange under paragraph (1) unless the monetary value of property transferred, or services provided, to the United States under the exchange is not less than the value of the property transferred by the United States. The Secretary concerned may waive the limitation in the preceding sentence in the case of an exchange of property for property in any case in which the Secretary determines that the item to be received by the United States in the exchange will significantly enhance the historical collection of the property administered by the Secretary.

(c) This section applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat materiel.

(d)(1) A loan or gift made under this section shall be subject to regulations prescribed by the Secretary concerned and to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486).

(2)(A) Except as provided in subparagraph (B), the United States may not incur any expense in connection with a loan or gift under subsection (a).

(B) The Secretary concerned may, without cost to the recipient, demilitarize, prepare, and transport in the continental United States for donation to a recognized war veterans' association an item authorized to be donated under this section if the Secretary determines the demilitarization, preparation, and transportation can be accomplished as a training mission without additional budgetary requirements for the unit involved.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(82), 94 Stat. 2927; Sept. 29, 1988, Pub. L. 100–456, div. A, title III, § 324(a), 102 Stat. 1954; Nov. 5, 1990, Pub. L. 101–510, div. A, title III, § 325, 104 Stat. 1531; Oct. 23, 1992, Pub. L. 102–484, div. A, title III, § 373, 106 Stat. 2385; Oct. 5, 1994, Pub. L. 103–337, div. A, title X, § 1071, 108 Stat. 2859.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2572	5:150p.	May 22, 1896, ch. 231; restated May 26, 1928, ch. 785; restated Feb. 28, 1933, ch. 137; restated June 19, 1940, ch. 398; July 31, 1947, ch. 421; restated Feb. 27, 1948, ch. 76, § 1, 62 Stat. 37; Oct. 31, 1951, ch. 654, § 2(2), 65 Stat. 706.

The word ''may'' is substituted for the words ''are each authorized, in their discretion''. The reference to posts of the Grand Army of the Republic is omitted, since that organization disbanded in 1950. The words ''under regulations to be prescribed by him'' are substituted for the words ''subject to rules and regulations covering the same in each department''. The words ''without expense to the United States'' are substituted for the words ''and the Government shall be at no expense in connection with any such loan or gift''. The words ''local unit'' are inserted in clause (7) to conform to clauses (5), (6), and (8).

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–337 inserted ''transportation,'' after ''salvage,''.

1992—Subsec. (d)(2). Pub. L. 102–484 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the'' for ''The'', and added subpar. (B).

1990—Subsec. (b)(1). Pub. L. 101–510, § 325(1), inserted before period at end ''or for search, salvage, and restoration services which directly benefit the historical collection of the armed forces''.

Subsec. (b)(2). Pub. L. 101–510, § 325(2), inserted '', or services provided,'' after ''monetary value of property transferred'' in first sentence and ''in the case of an exchange of property for property'' after ''preceding sentence'' in second sentence.

1988—Pub. L. 100–456 substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department, or the Secretary of Transportation, under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

''(1) a municipal corporation;

''(2) a soldiers' monument association;

''(3) a State museum;

''(4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

''(5) a post of the Veterans of Foreign Wars of the United States;

''(6) a post of the American Legion;

''(7) a local unit of any other recognized war veterans' association; or

''(8) a post of the Sons of Veterans Reserve.''

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department or the Secretary of Transportation'' for ''section 486 of title 40, the Secretary of a military department or the Secretary of the Treasury''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

American Legion, see section 41 et seq. of Title 36, Patriotic Societies and Observances.

Loan or gift of obsolete material and articles of historical interest by Secretary of the Navy, see section 7545 of this title.

Veterans of Foreign Wars of the United States, see section 111 et seq. of Title 36, Patriotic Societies and Observances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7545 of this title.

[§2573. Repealed. Pub. L. 96–513, title V, §511(83)(A), Dec. 12, 1980, 94 Stat. 2927]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 143, related to transfer of excess property to the Canal Zone Government.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§2574. Armament: sale of individual pieces

A piece of armament that can be advantageously replaced, and that is not needed for its historical value, may be sold by the military department having jurisdiction over it for not less than cost, if the Secretary concerned considers that there are adequate sentimental reasons for the sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 144.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2574	10:1262b. 34:545. 50:69.	Mar. 2, 1905, ch. 1307 (last 55 words of last par. under ''Ordnance Department''), 33 Stat. 841.

The words ''by the military department having jurisdiction over it'' are inserted for clarity. The words ''if the Secretary concerned considers'' are substituted for the words ''when there exist * * * in the judgment of the Secretary''.

§2575. Disposition of unclaimed property

(a) The Secretary of any military department, and the Secretary of Transportation, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of the Secretary's department, other than property subject to section 4712, 6522, or 9712 of this title or subject to subsection (c). However, property may not be disposed of until diligent effort has been made to find the owner (or the heirs, next of kin, or legal representative of the owner). The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days. If the owner (or the heirs, next of kin, or legal representative of the owner) is determined but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner (or heirs, next of kin, or legal representative of the owner) is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than $300, the Secretary may not dispose of the property until 45 days after the date it is received at a storage point designated by the Secretary.

(b) The net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner (or the heirs, next of kin, or legal representative of the owner) may file a claim for those proceeds with the General Accounting Office within five years after the date of the disposal of the property. If not filed within that period, such a claim may not be considered by a court or the General Accounting Office.

(c) No property covered by this section may be delivered to the Armed Forces Retirement Home by the Secretary of a military department, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Aug. 28, 1965, Pub. L. 89–143, 79 Stat. 581; Dec. 12, 1980, Pub. L. 96–513, title V, §511(84), 94 Stat. 2927; Nov. 29, 1989, Pub. L. 101–189, div. A, title III, §322(a), (b), title XVI, §1622(f)(1), 103 Stat. 1413, 1605; Nov. 5, 1990, Pub. L. 101–510, div. A, title XV, §1533(a)(2), 104 Stat. 1733.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2575(a)	5:150e. 5:150h. [Uncodified: Apr. 14, 1949, ch. 50, §6, 63 Stat. 45].	Apr. 14, 1949, ch. 50, 63 Stat. 45.
2575(b)	5:150f. 5:150g.	
2575(c)	5:150i.	

In subsection (a), the words ''under such regulations as they may respectively prescribe'' are substituted for 5:150h. The words ''other than property * * * subject to subsection (c)'' of this section are substituted for the words ''subject to the provisions of section 150i of this title''. The words ''other than property subject to sections 4712, 4713, 6522, 9712, or 9713 of this title'' are inserted, since uncodified section 6 of the source statute provided that the source statute for this revised section did not repeal or amend the source statutes for those revised sections. The words ''that comes into'' are substituted for the words ''which is now or may hereafter come into''. The word ''possession'' is omitted as covered by the words ''custody or control''. The words ''However, property may not be disposed of until'' are inserted for clarity. The word ''find'' is substituted for the words ''determine and locate''. The words ''until the expiration'' are substituted for the words ''prior to the expiration of a period''. The words ''determined but not found'' are substituted for the words ''have or has been determined''. The words ''or owners'', ''or representatives'', and ''sold or otherwise'' are omitted as surplusage.

In subsection (b), the words ''may file * * * within five years'' are substituted for the words ''may be filed * * * at any time prior to the expiration of five years'', in 5:150g, since the claim must be disallowed if not filed within that period. The words ''If not filed within that period'' are substituted for the words ''If claims are not filed prior to the expiration of five years from the date of the disposal of the property'', in 5:150g. The words ''such a claim may not be considered'' are substituted for the words ''they shall be barred from being acted on'', in 5:150g.

In subsection (c), the words ''No property * * * may * * * except'' are substituted for the words ''Any property * * * shall be limited''. The last sentence is substituted for 5:150i (proviso).

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, §1533(a)(2)(A), substituted ''section 4712, 6522, or 9712'' for ''section 4712, 4713, 6522, 9712, or 9713''.

Subsec. (c). Pub. L. 101–510, § 1533(a)(2)(B), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home'' and ''Secretary of a military department'' for ''Secretary of the Army or the Secretary of the Air Force'' and struck out at end ''The Home shall deliver the property to the owner (or the heirs, next of kin, or legal representative of the owner), if that person establishes a right to it within two years after its receipt by the Home.''

1989—Subsec. (a). Pub. L. 101–189, § 1622(f)(1), struck out ''of this section'' after ''subsection (c)''.

Pub. L. 101–189, § 322(b)(2)(A), substituted ''the Secretary's department'' for ''his department''.

Pub. L. 101–189, § 322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'' in two places.

Pub. L. 101–189, § 322(a)(3), inserted after second sentence: ''The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days.''

Pub. L. 101–189, § 322(a)(1), substituted ''45 days'' for ''120 days''.

Pub. L. 101–189, § 322(b)(2)(B), substituted ''owner (or heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representatives'' after ''When diligent effort to determine the''.

Pub. L. 101–189, § 322(a)(2), substituted ''more than $300, the Secretary may not dispose of the property until 45 days'' for ''$25 or more the property may not be disposed of until three months''.

Subsec. (b). Pub. L. 101–189, § 322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative''.

Subsec. (c). Pub. L. 101–189, § 322(b)(1), (3), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'', and ''that person'' for ''he'' before ''establishes a right''.

1980—Subsec. (a). Pub. L. 96–513, § 511(84)(A), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Subsec. (c). Pub. L. 96–513, § 511(84)(B), substituted ''United States Soldiers' and Airmen's Home'' for ''Soldiers' Home''.

1965—Subsec. (a). Pub. L. 89–143 provided for notice by certified mail and substituted provision for disposition of property without delay when diligent effort to determine ownership is unsuccessful and after three months following receipt at designated storage point of property with fair market value of $25 or more, for former provision for disposition of property one year after receipt at designated storage point.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 322(c) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to property that comes into the custody or control of the Secretary of a military department or the Secretary of Transportation after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Armed Forces Retirement Home, see section 401 et seq. of Title 24, Hospitals and Asylums.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5564; title 24 section 420; title 37 section 554.

§ 2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement and firefighting agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, and protective body armor which (1) are suitable for use by such agencies in carrying out law enforcement and firefighting activities, and (2) have been determined to be surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement or firefighting agency unless request therefor is made by such agency, in such form and manner as the Secretary of Defense shall prescribe, and such request, with respect to the type and amount of equipment so requested, is certified as being necessary and suitable for the operation of such agency by the Governor (or such State official as he may designate) of the State in which such agency is located. Equipment sold to a State or local law enforcement or firefighting agency under this section shall not exceed, in quantity, the amount requested and certified for such agency and shall be for the exclusive use of such agency. Such equipment may not be sold, or otherwise transferred, by such agency to any individual or public or private organization or agency.

(Added Pub. L. 90–500, title IV, § 403(a) Sept. 20, 1968, 82 Stat. 851; amended Pub. L. 96–513, title V, § 511(85), Dec. 12, 1980, 94 Stat. 2927.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. The surplus property provisions of that Act are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''under'' for ''pursuant to'', and ''(40 U.S.C. 471 et seq.)'' for ''(68 Stat. 377), as amended''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2577. Disposal of recyclable materials

(a)(1) The Secretary of Defense shall prescribe regulations to provide for the sale of recyclable materials held by a military department or defense agency and for the operation of recycling

programs at military installations. Such regulations shall include procedures for the designation by the Secretary of a military department (or by the Secretary of Defense with respect to facilities of a defense agency) of military installations that have established a qualifying recycling program for the purposes of subsection (b)(2).

(2) Any sale of recyclable materials by the Secretary of Defense or Secretary of a military department shall be in accordance with the procedures in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

(b)(1) Proceeds from the sale of recyclable materials at an installation shall be credited to funds available for operations and maintenance at that installation in amounts sufficient to cover the costs of operations, maintenance, and overhead for processing recyclable materials at the installation (including the cost of any equipment purchased for recycling purposes).

(2) If after such funds are credited a balance remains available to a military installation and such installation has a qualifying recycling program (as determined by the Secretary of the military department concerned or the Secretary of Defense), not more than 50 percent of that balance may be used at the installation for projects for pollution abatement, energy conservation, and occupational safety and health activities. A project may not be carried out under the preceding sentence for an amount greater than 50 percent of the amount established by law as the maximum amount for a minor construction project.

(3) The remaining balance available to a military installation may be transferred to the nonappropriated morale and welfare account of the installation to be used for any morale or welfare activity.

(c) If the balance available to a military installation under this section at the end of any fiscal year is in excess of $2,000,000, the amount of that excess shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 97–214, §6(b)(1), July 12, 1982, 96 Stat. 172; amended Pub. L. 98–525, title XIV, §1405(37), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''purposes'' for ''puposes''.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2578. Vessels: transfer between departments

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Transportation, and a vessel under the jurisdiction of the Department of Transportation may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Transportation, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

(Added Pub. L. 100–370, §1(k)(1), July 19, 1988, 102 Stat. 848.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8012], Dec. 19, 1985, 99 Stat. 1185, 1204.

§2579. War booty: procedures for handling and retaining battlefield objects

(a) POLICY.—The United States recognizes that battlefield souvenirs have traditionally provided military personnel with a valued memento of service in a national cause. At the same time, it is the policy and tradition of the United States that the desire for souvenirs in a combat theater not blemish the conduct of combat operations or result in the mistreatment of enemy personnel, the dishonoring of the dead, distraction from the conduct of operations, or other unbecoming activities.

(b) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations for the handling of battlefield objects that are consistent with the policies expressed in subsection (a) and the requirements of this section.

(2) When forces of the United States are operating in a theater of operations, enemy material captured or found abandoned shall be turned over to appropriate United States or allied military personnel except as otherwise provided in such regulations. A member of the armed forces (or other person under the authority of the armed forces in a theater of operations) may not (except in accordance with such regulations) take from a theater of operations as a souvenir an object formerly in the possession of the enemy.

(3) Such regulations shall provide that a member of the armed forces who wishes to retain as a souvenir an object covered by paragraph (2) may so request at the time the object is turned over pursuant to paragraph (2).

(4) Such regulations shall provide for an officer to be designated to review requests under paragraph (3). If the officer determines that the object may be appropriately retained as a war souvenir, the object shall be turned over to the member who requested the right to retain it.

(5) Such regulations shall provide for captured weaponry to be retained as souvenirs, as follows:

(A) The only weapons that may be retained are those in categories to be agreed upon jointly by the Secretary of Defense and the Secretary of the Treasury.

(B) Before a weapon is turned over to a member, the weapon shall be rendered unserviceable.

(C) A charge may be assessed in connection with each weapon in an amount sufficient to cover the full cost of rendering the weapon unserviceable.

(Added Pub. L. 103–160, div. A, title XI, §1171(a)(1), Nov. 30, 1993, 107 Stat. 1765.)

REGULATIONS

Section 1171(b) of Pub. L. 103–160 provided that: ''The initial regulations required by section 2579 of title 10,

United States Code, as added by subsection (a), shall be prescribed not later than 270 days after the date of enactment of this Act [Nov. 30, 1993]. Such regulations shall specifically address the following, consistent with section 2579 of title 10, United States Code, as added by subsection (a):

''(1) The general procedures for collection and disposition of weapons and other enemy material.

''(2) The criteria and procedures for evaluation and disposition of enemy material for intelligence, testing, or other military purposes.

''(3) The criteria and procedures for determining when retention of enemy material by an individual or a unit in the theater of operations may be appropriate.

''(4) The criteria and procedures for disposition of enemy material to a unit or other Department of Defense entity as a souvenir.

''(5) The criteria and procedures for disposition of enemy material to an individual as an individual souvenir.

''(6) The criteria and procedures for determining when demilitarization or the rendering unserviceable of firearms is appropriate.

''(7) The criteria and procedures necessary to ensure that servicemembers who have obtained battlefield souvenirs in a manner consistent with military customs, traditions, and regulations have a reasonable opportunity to obtain possession of such souvenirs, consistent with the needs of the service.''

CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.
2602. American National Red Cross: cooperation and assistance.
2603. Acceptance of fellowships, scholarships, or grants.
2604. United Seamen's Service: cooperation and assistance.
2605. Acceptance of gifts for defense dependents' schools.
2606. Scouting: cooperation and assistance in foreign areas.
2607. Acceptance of gifts for the Defense Intelligence College.
2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account.
2609. Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title III, § 353(c)(2), Oct. 5, 1994, 108 Stat. 2732, substituted ''schools'' for ''education system'' in item 2605.

1993—Pub. L. 103–160, div. A, title II, § 242(f)(2), title XI, § 1105(b)(3), Nov. 30, 1993, 107 Stat. 1605, 1750, inserted ''; Defense Cooperation Account'' in item 2608 and added item 2609.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(15), Dec. 5, 1991, 105 Stat. 1473, struck out ''and services'' after ''contributions'' in item 2608.

1990—Pub. L. 101–403, title II, § 202(a)(2), Oct. 1, 1990, 104 Stat. 874, added item 2608.

1989—Pub. L. 101–193, title V, § 502(b), Nov. 30, 1989, 103 Stat. 1708, added item 2607.

1988—Pub. L. 100–456, div. A, title III, § 323(b), Sept. 29, 1988, 102 Stat. 1953, added item 2606.

1986—Pub. L. 99–661, div. A, title III, § 314(b), Nov. 14, 1986, 100 Stat. 3854, added item 2605.

1970—Pub. L. 91–603, § 3(2), Dec. 31, 1970, 84 Stat. 1675, added item 2604.

1962—Pub. L. 87–555, § 1(2), July 27, 1962, 76 Stat. 244, added item 2603.

§ 2601. General gift funds

(a) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department. He may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest made under this subsection.

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) ''Department of the Army General Gift Fund'', in the case of deposits of that department;

(2) ''Department of the Navy General Gift Fund'', in the case of deposits of that department;

(3) ''Department of the Air Force General Gift Fund'', in the case of deposits of that department; and

(4) ''Coast Guard General Gift Fund'', in the case of deposits of the Secretary of Transportation.

The Secretary concerned may disburse funds deposited under this subsection for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

(c) For the purposes of Federal income, estate, and gift taxes, property that is accepted under subsection (a) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(d) The Secretary of the Treasury, upon the request of the Secretary of a military department, may retain money, securities, and the proceeds of the sale of securities, in the gift fund of the department concerned, and may invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The Secretary of the Treasury may do likewise with respect to the Coast Guard General Gift Fund. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund of the department concerned and may be disbursed as provided in subsection (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(86), 94 Stat. 2927.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2601(a)	5:150q.	Mar. 11, 1948, ch. 107, 62 Stat. 71.
2601(b)	5:150r.	
2601(c)	5:150s.	
2601(d)	5:150t.	

In subsection (a), the words ''receive'' and ''administration'' are omitted as surplusage.

In subsection (b), the words ''and conditions'' and ''United States'' are omitted as surplusage.

In subsection (c), the words ''any gift, devise, or bequest of'' and ''real or personal'' are omitted as surplusage.

In subsection (d), the words ''or any part thereof deposited in the Treasury pursuant to section 150r of this title'' are omitted as surplusage.

AMENDMENTS

1980—Subsec. (b)(4). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CROSS REFERENCES

Estate tax deductions of transfers for public, charitable, and religious uses, see section 2055 of Title 26, Internal Revenue Code.

Gift tax deductions of charitable and similar gifts, see section 2522 of Title 26.

Income tax deductions of charitable, etc., contributions and gifts, see section 170 of Title 26.

United States Naval Academy General Gift Fund, see section 6973 of this title.

United States Naval Academy Museum Fund, see section 6974 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2605, 2607, 4356 of this title.

§ 2602. American National Red Cross: cooperation and assistance

(a) Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense.

(b) Personnel of the American National Red Cross who are performing duties in connection with its cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing, those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the American National Red Cross, except that where civilian employees of the armed forces are quartered without charge, employees of the American National Red Cross may also be quartered without charge; and

(3) available office space, warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the American National Red Cross for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the American National Red Cross, including gifts for the use of the armed forces, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance accepted under this section.

(e) For the purposes of this section, employees of the American National Red Cross may not be considered as employees of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 145.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2602(a)	36:17.	July 17, 1953, ch. 222, §§1, 2, 7, 67 Stat. 178, 179.
2602(b)	36:17a (less provisos).	
2602(c)	36:17a (1st proviso).	
2602(d)	36:17a (last proviso).	
2602(e)	36:17b.	

In subsection (a), the words ''finds it necessary'' are substituted for the words ''shall find the * * * to be necessary''. The words ''cooperation and assistance'' are substituted for the words ''cooperation and use * * * assistance * * * the same''. The words ''under regulations to be prescribed by the Secretary of Defense'' are substituted for 36:17 (last sentence). The words ''tendered by the said Red Cross'' are omitted as surplusage.

In subsection (b), the introductory clause is substituted for 36:17a (1st 33 words). In clause (1), the word ''expense'' is substituted for the words ''cost and charge''. The words ''traveling to and from, and while performing, those duties'' are substituted for the words ''proceeding to their place of duty, while serving thereat, and while returning therefrom''. In clause (2), the words ''at their expense or at the expense of'' are substituted for the words ''providing the cost thereof is borne by such personnel or by''. The words ''quartered without charge'' are substituted for the words ''furnished quarters on the same basis without cost''. In clause (3), the words ''when such facilities are'' are omitted as surplusage.

In subsection (c), the words ''for travel outside the United States to assume or perform'' are substituted for the words ''so serving or proceeding abroad to enter upon such service''.

In subsection (d), the word ''equipment'' is omitted as covered by the word ''supplies''. The words ''gifts for the use of'' are substituted for the words ''Red Cross supplies that may be tendered as a gift and accepted for use by''. The word ''expense'' is substituted for the words ''cost and charge''. The words ''rules and'' are omitted as surplusage.

In subsection (e), the words ''Federal Government of'' are omitted as surplusage.

REPORT ON ASSISTANCE TO RED CROSS FOR EMERGENCY COMMUNICATIONS SERVICES FOR MEMBERS OF ARMED FORCES AND FAMILIES

Pub. L. 103–377, div. A, title III, § 383(b), Oct. 5, 1994, 108 Stat. 2740, provided that: ''Not later than November 30 in each of 1994, 1995, and 1996, the Secretary of Defense shall submit to Congress a report on whether it is necessary for the Department of Defense to support the emergency communications services of the American National Red Cross in order to provide such services for members of the Armed Forces and their families. The report shall include the following:

''(1) An estimate of the amount of funds necessary to provide such support.

''(2) A projection of the date upon which the American National Red Cross can assume full financial responsibility for providing such emergency communications services.

''(3) An assessment of the alternatives available to the Secretary for obtaining such emergency communications services, including the provision of such services by the Department of Defense.''

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Equipment for instruction and practice, loan to American National Red Cross, see section 2542 of this title.

Fees for execution and issuance of passport, see section 214 of Title 22, Foreign Relations and Intercourse.

Military installations, erection and use of buildings license to American National Red Cross, see section 2670 of this title.

§ 2603. Acceptance of fellowships, scholarships, or grants

(a) Notwithstanding any other provision of law, a fellowship, scholarship, or grant may, under regulations to be prescribed by the President or his designee, be made by a corporation, fund, foundation, or educational institution that is organized and operated primarily for scientific, literary, or educational purposes to any member of the Armed Forces, and the benefits thereof may be accepted by him—

(1) in recognition of outstanding performance in his field;

(2) to undertake a project that may be of value to the United States; or

(3) for development of his recognized potential for future career service.

However, the benefits of such a fellowship, scholarship, or grant may be accepted by the member in addition to his pay and allowances only to the extent that those benefits would be conferred upon him if the education or training contemplated by that fellowship, scholarship, or grant were provided at the expense of the United States. In addition, if such a benefit, in cash or in kind, is for travel, subsistence, or other expenses, an appropriate reduction shall be made from any payment that is made for the same purpose to the member by the United States incident to his acceptance of the fellowship, scholarship, or grant.

(b) Each member of the Armed Forces who accepts a fellowship, scholarship, or grant in accordance with subsection (a) shall, before he is permitted to undertake the education or training contemplated by that fellowship, scholarship, or grant, agree in writing that, after he completes the education or training, he will serve on active duty for a period at least three times the length of the period of the education or training.

(Added Pub. L. 87–555, § 1(1), July 27, 1962, 76 Stat. 244.)

EX. ORD. NO. 11079. REGULATIONS FOR ACCEPTANCE OF FELLOWSHIPS, SCHOLARSHIPS, OR GRANTS

Ex. Ord. No. 11079, Jan. 25, 1963, 28 F.R. 819, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 2603 of Title 10, United States Code [this section], I hereby designate the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, the Secretary of Transportation, with respect to members of the Coast Guard when it is not operating as a service in the Navy, and the Secretary of Health and Human Services, with respect to commissioned officers of the Public Health Service, to prescribe regulations under which members of the Armed Forces and commissioned officers of the Public Health Service may accept fellowships, scholarships, or grants from corporations, funds, foundations, or educational institutions organized and operated primarily for scientific, literary, or educational purposes. To the extent practicable, such regulations shall be uniform.

CROSS REFERENCES

Commissioned officers of the Public Health Service, applicability of this section, see section 213a of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 2604. United Seamen's Service: cooperation and assistance

(a) Whenever the President finds it necessary in the interest of United States commitments abroad to provide facilities and services for United States merchant seamen in foreign areas, he may authorize the Secretary of Defense, under such regulations as the Secretary may prescribe, to cooperate with and assist the United Seamen's Service in establishing and providing those facilities and services.

(b) Personnel of the United Seamen's Service who are performing duties in connection with the cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the United Seamen's Service, except that where civilian employees of the armed forces are quartered without charge, employees of the United Seamen's Service may also be quartered without charge; and

(3) available office space (including space for recreational activities for seamen), warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the United Seamen's Service for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the United Seamen's Service, including gifts for the use of merchant seamen, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance provided under this section.

(e) Where practicable, the President shall also make arrangements to provide for convertibility of local currencies for the United Seamen's Service, in connection with its activities under subsection (a).

(f) For the purposes of this section, employees of the United Seamen's Service may not be considered as employees of the United States.

(Added Pub. L. 91–603, § 3(1), Dec. 31, 1970, 84 Stat. 1674.)

SHORT TITLE

Section 1 of Pub. L. 91–603 provided: ''That this Act [enacting this section, amending sections 1151, 1152, 1171, and 1223 of Title 46, Appendix, Shipping, and enacting provisions set out as a note under this section] may be cited as the 'Seamen's Service Act'.''

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Pub. L. 91–603 provided that: ''It is the purpose of this Act [enacting this section and amending sections 1151, 1152, 1171 and 1223 of Title 46, Appendix, Shipping], by authorizing appropriate departments and agencies of the United States Government to cooperate with the United Seamen's Service (a nonprofit, charitable organization incorporated under the laws of the State of New York) in the establishment and operation of facilities for United States merchant seamen in foreign areas, to promote the welfare of such seamen, essential to the overall interests of shipment of United States goods and supplies to such areas.''

§2605. Acceptance of gifts for defense dependents' schools

(a) The Secretary of Defense may accept, hold, administer, and spend any gift (including any gift of an interest in real property) made on the condition that it be used in connection with the operation or administration of a defense dependents' school. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''Department of Defense Dependents' Education Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of defense dependents' schools, subject to the terms of the gift.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the Department of Defense Dependents' Education Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section, the term ''gift'' includes a devise of real property or a bequest of personal property.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(g) In this section, the term ''defense dependents' school'' means the following:

(1) A school established as part of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) An elementary or secondary school established pursuant to section 2164 of this title.

(Added Pub. L. 99–661, div. A, title III, §314(a), Nov. 14, 1986, 100 Stat. 3853; amended Pub. L. 103–337, div. A, title III, §353(a)–(c)(1), Oct. 5, 1994, 108 Stat. 2731.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (g)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1994—Pub. L. 103–337, §353(c)(1), substituted ''schools'' for ''education system'' in section catchline.

Subsec. (a). Pub. L. 103–337, §353(a)(1), substituted ''a defense dependents' school'' for ''the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.)''.

Subsec. (b). Pub. L. 103–337, §353(a)(2), substituted ''defense dependents' schools'' for ''the defense dependent's education system''.

Subsec. (g). Pub. L. 103–337, §353(b), added subsec. (g).

§2606. Scouting: cooperation and assistance in foreign areas

(a) Subject to subsection (b), the Secretary concerned may cooperate with and assist qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States.

(b) Cooperation and assistance under subsection (a) shall be provided under regulations prescribed by the Secretary of Defense and may be provided only if the President determines that such cooperation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces.

(c) Personnel of a qualified scouting organization, including officials certified by that organization as representing that organization, who are performing duties in connection with cooperation and assistance provided under subsection (a) may be furnished—

(1) transportation at the expense of the United States while traveling to and from, and while performing, such duties in the same manner as civilian employees of the United States; and

(2) available office space (including space for recreational activities for Boy Scouts and Girl Scouts), warehousing, utilities, and a means of communication, without charge.

(d) Supplies of a qualified scouting organization may be transported at the expense of the United States if the Secretary concerned determines, under regulations prescribed under subsection (b), that the supplies are necessary to the cooperation and assistance provided under this section.

(e) The Secretary concerned may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services under subsection (a). Any such reimbursement may not be made from appropriated funds and shall be made under regulations prescribed under subsection (b).

(f) For the purposes of this section, employees of a qualified scouting organization performing services under subsection (a) may not be considered to be employees of the United States.

(g) In this section, the term ''qualified scouting organization'' means the Girl Scouts of the United States of America and the Boy Scouts of America.

(Added Pub. L. 100–456, div. A, title III, §323(a), Sept. 29, 1988, 102 Stat. 1953.)

EX. ORD. NO. 12715. DETERMINATION FOR SUPPORT OF SCOUTING ACTIVITIES OVERSEAS

Ex. Ord. No. 12715, May 3, 1990, 55 F.R. 19051, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America,

and pursuant to section 2606(b) of title 10, United States Code, with regard to support of scouting activities overseas, I hereby determine that the cooperation and assistance authorized by section 2606(a) of that title is necessary in the interest of the morale, welfare, and recreation of members of the armed forces. The Secretary of Defense, or his designee, shall issue regulations concerning such cooperation and support.

GEORGE BUSH.

§ 2607. Acceptance of gifts for the Defense Intelligence College

(a) The Secretary of Defense may accept, hold, administer, and use any gift (including any gift of an interest in real property) made for the purpose of aiding and facilitating the work of the Defense Intelligence College and may pay all necessary expenses in connection with the acceptance of such a gift.

(b) Money, and proceeds from the sale of property, received as a gift under subsection (a) shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary of Defense to the extent provided in annual appropriation Acts.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d) In this section, the term ''gift'' includes a bequest of personal property or a devise of real property.

(Added Pub. L. 101–193, title V, § 502(a), Nov. 30, 1989, 103 Stat. 1708.)

§ 2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account

(a) ACCEPTANCE AUTHORITY.—The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money or real or personal property made by such person, foreign government, or international organization for use by the Department of Defense.

(b) ESTABLISHMENT OF DEFENSE COOPERATION ACCOUNT.—(1) There is established in the Treasury of the United States a special account to be known as the ''Defense Cooperation Account''.

(2) Contributions of money and proceeds from the sale of any property accepted by the Secretary of Defense under subsection (a) shall be credited to the Defense Cooperation Account.

(c) USE OF THE DEFENSE COOPERATION ACCOUNT.—(1) Funds in the Defense Cooperation Account may be appropriated for a function described in section 114 of this title only to the extent that the appropriation of such funds for such purpose is authorized in accordance with that section.

(2) Funds in the Defense Cooperation Account shall not be made available for obligation or expenditure except to the extent and in the manner provided in subsequent appropriations Acts.

(d) USE OF PROPERTY.—Any contribution of property received under this section may be—

(1) retained and used by the Department of Defense in the form in which it was donated;

(2) sold or otherwise disposed of upon such terms and conditions and in accordance with such procedures as the Secretary determines appropriate; or

(3) converted into a form usable by the Department of Defense.

(e) REPORTING REQUIREMENT.—(1) Not later than 30 days after the end of each quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on contributions of property accepted by the Secretary under this section during the preceding quarter. The Secretary shall include in each such report a description of all property having a value of more than $1,000,000.

(2) In computing the value of any property referred to in paragraph (1), the Secretary shall aggregate the value of—

(A) similar items of property accepted by the Secretary during the quarter concerned; and

(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.

(f) AUTHORITY TO USE PROPERTY.—Property accepted under subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property may not be used in connection with any program, project, or activity if the use of such property would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity.

(g) INVESTMENT OF MONEY.—(1) Upon request by the Secretary of Defense, the Secretary of the Treasury may invest money in the Defense Cooperation Account in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) Any interest or other income that accrues from investment in securities referred to in paragraph (1) shall be deposited to the credit of the Defense Cooperation Account.

(h) NOTIFICATION OF CONDITIONS.—The Secretary of Defense shall notify Congress of any condition imposed by the donor on the use of any contribution accepted by the Secretary under the authority of this section.

(i) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) ITEMS INCLUDED AS CONTRIBUTIONS.—In this section, the term ''contribution'' includes a devise of real property or a bequest of personal property.

(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–403, title II, § 202(a)(1), Oct. 1, 1990, 104 Stat. 872; amended Pub. L. 102–190, div. A, title X, § 1061(a)(16), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–160, div. A, title XI, § 1105(b)(1), (2), Nov. 30, 1993, 107 Stat. 1750.)

AMENDMENTS

1993—Pub. L. 103–160, § 1105(b)(2), inserted ''; Defense Cooperation Account'' in section catchline.

Subsec. (i). Pub. L. 103–160, §1105(b)(1), substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of money and property accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

1991—Subsec. (g)(1). Pub. L. 102–190 inserted ''(1)'' before ''Upon request''.

§2609. Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account

(a) ACCEPTANCE AUTHORITY.—The Secretary of Defense may accept from any allied foreign government or any international organization any contribution of money made by such foreign government or international organization for use by the Department of Defense for Theater Missile Defense programs.

(b) ESTABLISHMENT OF THEATER MISSILE DEFENSE COOPERATION ACCOUNT.—(1) There is established in the Treasury a special account to be known as the ''Theater Missile Defense Cooperation Account''.

(2) Contributions accepted by the Secretary of Defense under subsection (a) shall be credited to the Account.

(c) USE OF THE ACCOUNT.—Funds in the Account are hereby made available for obligation for research, development, test, and evaluation, and for procurement, for Theater Missile Defense programs of the Department of Defense.

(d) INVESTMENT OF MONEY.—(1) Upon request by the Secretary of Defense, the Secretary of the Treasury may invest money in the Account in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) Any interest or other income that accrues from investment in securities referred to in paragraph (1) shall be deposited to the credit of the Account.

(e) NOTIFICATION OF CONDITIONS.—The Secretary of Defense shall notify Congress of any condition imposed by the donor on the use of any contribution accepted by the Secretary under the authority of this section.

(f) ANNUAL AUDIT BY GAO.—The Comptroller General of the United States shall conduct an annual audit of money accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.

(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 103–160, div. A, title II, §242(f)(1), Nov. 30, 1993, 107 Stat. 1605.)

CHAPTER 157—TRANSPORTATION

Sec.
2631. Supplies: preference to United States vessels.
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2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department.
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AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, §1173(b), Nov. 30, 1993, 107 Stat. 1767, added item 2631a.

1991—Pub. L. 102–88, title V, §501(b), Aug. 14, 1991, 105 Stat. 435, added item 2642.

1990—Pub. L. 101–510, div. A, title III, §326(a)(2), Nov. 5, 1990, 104 Stat. 1531, added item 2637.

1987—Pub. L. 100–180, div. A, title XII, §1250(a)(2), Dec. 4, 1987, 101 Stat. 1168, added item 2641.

1986—Pub. L. 99–661, div. A, title XII, §1204(a)(2), Nov. 14, 1986, 100 Stat. 3971, added item 2640.

Pub. L. 99–550, §2(a)(2), Oct. 27, 1986, 100 Stat. 3070, struck out item 2637 ''Transportation between residence and place of work for senior defense officials''.

1984—Pub. L. 98–525, title VI, §614(b), title XIV, §1401(j)(2), Oct. 19, 1984, 98 Stat. 2540, 2620, added items 2637 to 2639.

1982—Pub. L. 97–258, §2(b)(5)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2636.

1979—Pub. L. 96–125, title VIII, §807(c)(2), Nov. 26, 1979, 93 Stat. 950, inserted ''and on military installations'' after ''places of employment'' in item 2632.

1973—Pub. L. 93–155, title VIII, §814(b), Nov. 16, 1973, 87 Stat. 621, added item 2635.

1965—Pub. L. 89–101, §1(2), July 30, 1965, 79 Stat. 425, substituted ''change of permanent station'' for ''permanent change of station'' in item 2634.

1962—Pub. L. 87–651, title I, §111(c), Sept. 7, 1962, 76 Stat. 511, substituted ''Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department'' for ''Terminal Services, furnish to commercial steamship companies'' in item 2633, and added item 2634.

1957—Pub. L. 85–44, §2, June 1, 1957, 71 Stat. 45, added item 2633.

§2631. Supplies: preference to United States vessels

(a) Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

(b)(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the

United States (including any territory of the United States).

(2) In paragraph (1), the term ''reflagging or repair work'' means work performed on a vessel—

(A) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(B) to convert the vessel to a more useful military configuration.

(3) The Secretary of Defense may waive the requirement described in paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately notify the Congress of any such waiver and the reasons for such waiver.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Nov. 30, 1993, Pub. L. 103–160, div. A, title III, § 315(a), 107 Stat. 1619.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2631	10:1365. 34:528.	Apr. 28, 1904, ch. 1766, 33 Stat. 518.

The word ''supplies'' is substituted for the words ''coal, provisions, fodder, or supplies of any description'', in 10:1365 and 34:528. The words ''pursuant to law'' and ''the use of'', in 10:1365 and 34:528, are omitted as surplusage. The words ''as otherwise provided by law'', in 10:1365 and 34:528, are used rather than the words ''under the law as it now exists'', in section 1 of the Act of April 28, 1904, ch. 1766, 33 Stat. 518. The word ''may'' is substituted for the word ''shall''. The words ''However, if'' are substituted for the words ''unless * * * in which case''. The words ''private persons'' are substituted for the words ''private parties or companies'', in 10:1365 and 34:528. The last sentence is substituted for the proviso of 10:1365 and 34:528.

AMENDMENTS

1993—Pub. L. 103–160 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 315(b) of Pub. L. 103–160 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a vessel for which reflagging or repair work is necessary to be performed after the date of the enactment of this Act [Nov. 30, 1993].''

DELEGATION OF AUTHORITY UNDER THE CARGO PREFERENCE ACT

Memorandum of the President of the United States, Aug. 7, 1985, 50 F.R. 36565, provided:

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2350b, 2551 of this title; title 46 App. section 1241s.

§ 2631a. Contingency planning: sealift and related intermodal transportation requirements

(a) CONSIDERATION OF PRIVATE CAPABILITIES.—The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are available from operators of privately owned United States flag merchant vessels.

(b) PRIVATE CAPACITIES PRESENTATIONS.—The Secretary shall afford each operator of a vessel referred to in subsection (a), not less often than annually, an opportunity to present to the Department of Defense information on its port-to-port and intermodal transportation capacities.

(Added Pub. L. 103–160, div. A, title XI, § 1173(a), Nov. 30, 1993, 107 Stat. 1767.)

§ 2632. Transportation to and from certain places of employment and on military installations

(a)(1) Whenever the Secretary of the military department concerned determines that it is necessary for the effective conduct of the affairs of his department, the Secretary may provide the transportation described in paragraph (2).

(2) Transportation that may be provided under this subsection is assured and adequate transportation by motor vehicle or water carrier as follows:

(A) Transportation among places on a military installation (including any subinstallation of a military installation).

(B) Transportation to and from their places of duty or employment on a military installation for persons covered by this subsection.

(C) Transportation to and from a military installation for persons covered by this subsection and their dependents, in the case of a military installation located in an area determined by the Secretary concerned not to be adequately served by regularly scheduled, and timely, commercial or municipal mass transit services.

(D) Transportation to and from their places of employment for persons attached to, or employed in, a private plant that is manufacturing material for that department, but only during a war or a national emergency declared by Congress or the President.

(3) Except as provided under subsection (b)(3), transportation under this subsection shall be provided at reasonable rates of fare under regulations prescribed by the Secretary of Defense.

(4) Persons covered by this subsection, in the case of any military installation, are members of the armed forces, employees of the military department concerned, and other persons attached to that department who are assigned to or employed at that installation.

(b)(1) Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided unless the Secretary concerned, or an officer of the department concerned designated by the Secretary, determines that—

(A) other facilities are inadequate and cannot be made adequate;

(B) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

(C) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(2) The Secretary of Defense shall require that, in determining whether to provide transportation described in subsection (a)(2)(A) at any military installation, the Secretary of the military department concerned shall give careful consideration to the potential for saving energy and reducing air pollution.

(3) In providing transportation described in subsection (a)(2)(A) at any military installation, the Secretary concerned may not require a fare for the transportation of members of the armed forces if the transportation is incident to the performance of duty. In providing transportation described in subsection (a)(2)(C) to and from any military installation, the Secretary concerned (under regulations prescribed under subsection (a)(3)) may waive any requirement for a fare.

(4) The authority under subsection (a) to enter into contracts under which the United States is obligated to make outlays shall be effective for any fiscal year only to the extent that the budget authority for such outlays is provided in advance by appropriation Acts.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force, Marine Corps, or the Coast Guard, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and

(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer of the department designated by the Secretary, and that may provide for the pooling of Government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Sept. 11, 1978, Pub. L. 95–362, 92 Stat. 596; Nov. 26, 1979, Pub. L. 96–125, title VIII, § 807(a)–(c)(1), 93 Stat. 949, 950; Dec. 4, 1987, Pub. L. 100–180, div. A, title III, § 318(a)–(c), 101 Stat. 1076, 1077.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2632(a)	5:189c (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	May 28, 1948, ch. 352, § 1, 62 Stat. 276.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	5:415d (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	
	5:626n (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	
2632(b)	5:189c (clause 4).	
	5:415d (clause 4).	
	5:626n (clause 4).	
2632(c)	5:189c (clause 1; and clause 3, less 17 words before proviso).	
	5:415d (clause 1; and clause 3, less 17 words before proviso).	
	5:626n (clause 1; and clause 3, less 17 words before proviso).	
2632(d)	5:189c (clause 2, less words before semicolon).	
	5:415d (clause 2, less words before semicolon).	
	5:626n (clause 2, less words before semicolon).	

In subsection (a), the words ''it is necessary * * * he may * * * provide assured and adequate transportation'' are substituted for the words ''requires assured and adequate transportation facilities * * * he is authorized * * * to provide such transportation''. The words ''in the absence of adequate private or other facilities'' are omitted as covered by subsection (b)(2). The words ''subject, however, to the following provisions and conditions'' are omitted, since the revised section states those conditions positively in the following subsections. The words ''at reasonable rates of fare'' are substituted for the first 23 words of clause 2 of 5:189c, 415d, and 626n. The words ''under regulations to be prescribed by him'' are substituted for the words ''under such regulations as the Secretary of the Army [Navy, Air Force] shall prescribe'' in clause 2, and the 17 words before the proviso of clause 3, of 5:189c, 415d, and 626n.

In subsection (b), the words ''Transportation * * * under subsection (a)'' are substituted for the words ''The authority granted in this section to the Secretary of the Army [Navy, Air Force]''. The words ''may not be provided'' are substituted for the words ''shall be exercised''. The word ''transportation'' is substituted for the word ''service''. The words ''in each case'', ''as the case may be, that existing private and'', and ''by other means'' are omitted as surplusage.

Subsection (b)(3) is substituted for the last 25 words of clause 4 of 5:189c, 415d, and 626n.

In subsection (c), the introductory clause is substituted for the words ''The equipment required to provide such transportation facilities may be either''. The words ''considered necessary'' are substituted for the words ''shall determine necessary and advisable under the existing circumstances''. The proviso of clause 3 of 5:189c, 415d, and 626n is stated as a positive rule in clause (3) of the revised subsection. The words ''for operation by the Department of the Army [Navy, Air Force], and when so obtained'', ''civil'', ''with such department'', ''Equipment so obtained'', ''and conditions'', and the first 25 words of clause 3 of 5:189c, 415d, and 626n are omitted as surplusage.

In subsection (d), the words ''Treasury as'' are substituted for the words ''Treasury of the United States to the credit of''.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–180, § 318(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whenever the Secretary of a military department determines that it is necessary for the ef-

fective conduct of the affairs of that department, he may, at reasonable rates of fare under regulations to be prescribed by the Secretary of Defense, provide assured and adequate transportation by motor vehicle or water carrier—

''(1) among places on any military installation (including any subinstallation thereof) under the jurisdiction of that department; and

''(2) to and from their places of employment—

''(A) for persons attached to, or employed in, that department; and

''(B) during a war or national emergency declared by the Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.''

Subsec. (b)(1). Pub. L. 100–180, § 318(c)(1), substituted ''Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided'' for ''Transportation may not be provided under subsection (a)(2)''.

Subsec. (b)(2). Pub. L. 100–180, § 318(b)(1), (c)(2), redesignated subpar. (A) as par. (2) and substituted ''transportation described in subsection (a)(2)(A) at any military installation'' for ''transportation at any military installation under subsection (a)(1)''. Subpar. (B) was struck out and replaced by par. (3) and subpar. (C) was redesignated par. (4).

Subsec. (b)(3). Pub. L. 100–180, § 318(b)(2), substituted par. (3) for former subpar. (2)(B) which read as follows: ''In providing transportation at any military installation under such subsection, the Secretary of the military department concerned may not require any fare for the transportation of members of the armed forces if the transportation is incident to training or other operational activities on such installation.''

Subsec. (b)(4). Pub. L. 100–180, § 318(b)(3), (c)(3), redesignated former par. (2)(C) as par. (4) and substituted ''subsection (a)'' for ''subsection (a)(1)''.

1979—Pub. L. 96–125, § 807(c)(1), inserted ''and on military installations'' after ''places of employment'' in section catchline.

Subsec. (a). Pub. L. 96–125, § 807(a), substituted reference to Secretary of a military department and to the Secretary of Defense for references to Secretary concerned and inserted reference to any military installation (including any subinstallation thereof) under the jurisdiction of that department.

Subsec. (b). Pub. L. 96–125, § 807(b), designated existing provisions as par. (1) and cls. (1) to (3) as cls. (A) to (C), substituted ''subsection (a)(2)'' for ''subsection (a)'' and added par. (2).

1978—Subsec. (a). Pub. L. 95–362, § 1(1), substituted ''concerned'' for ''of a military department'' and ''of his department'' for ''of that department''.

Subsec. (b). Pub. L. 95–362, § 1(2), struck out ''of the military department'' before ''concerned''.

Subsec. (c)(2)(A). Pub. L. 95–362, § 1(3), inserted reference to the Coast Guard.

REGULATIONS

Section 318(d) of Pub. L. 100–180 required that regulations to implement amendments to this section be prescribed not later than 90 days after Dec. 4, 1987.

§ 2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department

(a) Notwithstanding section 1301(a) of title 31, the Secretary of a military department may, under such regulations as he may prescribe, furnish stevedoring and terminal services and facilities to vessels carrying cargo, or passengers, or both, sponsored by his department.

(b) The furnishing of services and facilities under this section shall be at fair and reasonable rates.

(c) The proceeds from furnishing services and facilities under this section shall be paid to the credit of the appropriation or fund out of which the services or facilities were supplied.

(Added Pub. L. 85–44, § 1, June 1, 1957, 71 Stat. 45; amended Pub. L. 87–651, title I, § 111(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 96–513, title V, § 511(87), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 97–258, § 3(b)(7), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

1962 ACT

Section 2633 is restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1301(a) of title 31'' for ''section 3678 of the Revised Statutes (31 U.S.C. 628)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 3678 of the Revised Statutes (31 U.S.C. 628)'' for ''section 628 of title 31''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2634. Motor vehicles: for members on change of permanent station

(a) When a member of an armed force is ordered to make a change of permanent station, one motor vehicle that is owned or leased by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned or leased by him (or a dependent of his) was transported in advance of that change of permanent station under section 406(h) of title 37, be transported, at the expense of the United States, to his new station or such other place as the Secretary concerned may authorize—

(1) on a vessel owned, leased, or chartered by the United States;

(2) by privately owned American shipping services;

(3) by foreign-flag shipping services if shipping services described in clauses (1) and (2) are not reasonably available; or

(4) by other surface transportation if such means of transport does not exceed the cost to the United States of other authorized means.

When the Secretary concerned determines that a replacement for that motor vehicle is necessary for reasons beyond the control of the member and is in the interest of the United States, and he approves the transportation in advance, one additional motor vehicle of the member (or a dependent of the member) may be so transported.

(b) In this section:

(1) The term ''change of permanent station'' means the transfer or assignment of a member of the armed forces from a permanent station inside the continental United States to a permanent station outside the continental United States or from a permanent station outside the continental United States to another permanent station. It also includes an authorized change in home port of a vessel, or a transfer

or assignment between two permanent stations in the continental United States when the member cannot, because of injury or the conditions of the order, drive the motor vehicle between the permanent duty stations.

(2) The term ''continental United States'' does not include Alaska.

(c) When there has been a shipping error, or when orders directing a change of permanent station have been canceled, revoked, or modified after receipt by the member, a motor vehicle transported pursuant to this section may also be reshipped or transshipped in accordance with this section.

(d) When the Secretary concerned makes a determination under section 406(l) of title 37 that the dependents of a member on a permanent change of station are unable to accompany the member to an overseas duty station because of unexpected and uncontrollable circumstances, and the member shipped a motor vehicle pursuant to this section in anticipation of a dependent accompanying the member to the new duty station, the member may reship or transship such motor vehicle in accordance with this section.

(e) The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) may prescribe regulations limiting those leased motor vehicles that may be transported pursuant to this section based upon the length of the lease and other terms and conditions of the lease that the Secretary considers appropriate.

(f) No carrier, port agent, warehouseman, freight forwarder, or other person involved in the transportation of property may have any lien on, or hold, impound, or otherwise interfere with, the movement of a motor vehicle being transported under this section.

(Added Pub. L. 87–651, title I, §111(b), Sept. 7, 1962, 76 Stat. 510; amended Pub. L. 88–431, §1(b), Aug. 14, 1964, 78 Stat. 439; Pub. L. 89–101, §1(1), July 30, 1965, 79 Stat. 425; Pub. L. 93–548, §§1, 2, Dec. 26, 1974, 88 Stat. 1743; Pub. L. 97–60, title II, §202, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 99–661, div. A, title VI, §§611, 620(b)(2), Nov. 14, 1986, 100 Stat. 3878, 3883; Pub. L. 100–26, §7(j)(6), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. A, title VI, §616(a), Dec. 4, 1987, 101 Stat. 1096; Pub. L. 102–484, div. A, title VI, §622(b), Oct. 23, 1992, 106 Stat. 2422.)

HISTORICAL AND REVISION NOTES

The new section 2634 of title 10 combines sections 4748, 6157, and 9748 of this title and section 471a of title 14 (which are being repealed), and reflects the Act of May 28, 1956, ch. 325 (46 U.S.C. 1241(c)).

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1987—Subsec. (a). Pub. L. 100–180, §616(a)(1), inserted ''or leased'' after ''owned'' in two places in introductory text.

Subsec. (d). Pub. L. 100–26 redesignated subsec. (f) as (d).

Subsec. (e). Pub. L. 100–180, §616(a)(2), added subsec. (e).

Subsec. (f). Pub. L. 100–26 redesignated subsec. (f) as (d).

1986—Subsec. (a). Pub. L. 99–661, §611(a), substituted ''by other surface transportation'' for ''in the case of movement, the major portion of which is by shipping services described in clause (1) or (2), by other surface transportation between customary ports of embarkation and debarkation'' in par. (4), and struck out '', or his designee,'' after ''When the Secretary concerned'' in last sentence.

Subsec. (b). Pub. L. 99–661, §611(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In this section, 'change of permanent station' means the transfer or assignment of a member of the armed forces from one permanent station to another. It includes the change from home or from the place from which ordered to active duty to first station upon appointment, call to active duty, enlistment, or induction, and from last duty station to home or to the place from which ordered to active duty upon separation from the service, placement upon the temporary disability retired list, release from active duty, or retirement. It also includes an authorized change in home yard or home port of a vessel.''

Subsec. (f). Pub. L. 99–661, §620(b)(2), added subsec. (f).

1981—Subsec. (a). Pub. L. 97–60 substituted ''one motor vehicle that is owned by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned by him (or a dependent of his) was transported'' for ''one motor vehicle owned by him and for his personal use or the use of his dependents may, unless a motor vehicle owned by him was transported'' in provisions preceding par. (1) and, in provisions following par. (4), inserted ''(or a dependent of the member)'' after ''one additional motor vehicle of the member''.

1974—Subsec. (a)(4). Pub. L. 93–548, §1, added par. (4).

Subsec. (c). Pub. L. 93–548, §2, added subsec. (c).

1965—Pub. L. 89–101 substituted ''change of permanent station'' for ''permanent change of station'' in section catchline, designated existing provisions as subsec. (a), substituted ''change of permanent station'' for ''permanent change of station'' in two places, inserted ''or for the use of his dependents'' and ''or such other place as the Secretary concerned may authorize'', added cl. 3, provided for the transportation of one additional motor vehicle when replacement is necessary, and added subsec. (b).

1964—Pub. L. 88–431 inserted '', leased, or chartered'' and ''unless a motor vehicle owned by him was transported in advance of that permanent change of station under section 406(h) of title 37''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661, applicable with respect to members whose dependents are unable to accompany them to an overseas permanent duty station because of circumstances arising on or after Nov. 14, 1986, see section 620(c)(2) of Pub. L. 99–661, set out as a note under section 406 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT; REIMBURSEMENT OF EXPENSES

Section 3 of Pub. L. 89–101 provided that: ''This Act [amending this section and section 406 of title 37] shall be effective May 1, 1965. Any member who—

''(1) transported a motor vehicle at his personal expense after April 30, 1965, and before the enactment of this Act [July 30, 1965]; and

''(2) would have been entitled to the transportation of such motor vehicle at Government expense under the provisions of this Act;

shall be reimbursed for the allowable transportation cost actually expended by him. Appropriations available for permanent change of station travel shall be available for the reimbursements authorized by this Act.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary

of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a; title 37 sections 406, 406b, 406c; title 42 section 213a.

§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability

(a) The Secretary of Defense is authorized to assist the Department of Health and Human Services and the Department of Transportation in providing medical emergency helicopter transportation services to civilians. Any resources provided under this section shall be under such terms and conditions, including reimbursement, as the Secretary of Defense deems appropriate and shall be subject to the following specific limitations:

(1) Assistance may be provided only in areas where military units able to provide such assistance are regularly assigned, and military units shall not be transferred from one area to another for the purpose of providing such assistance.

(2) Assistance may be provided only to the extent that it does not interfere with the performance of the military mission.

(3) The provision of assistance shall not cause any increase in funds required for the operation of the Department of Defense.

(b) No individual (or his estate) who is authorized by the Department of Defense to perform services under a program established pursuant to subsection (a), and who is acting within the scope of his duties, shall be liable for injury to, or loss of property or personal injury or death which may be caused incident to providing such services.

(Added Pub. L. 93–155, title VIII, § 814(a), Nov. 16, 1973, 87 Stat. 620; amended Pub. L. 96–513, title V, § 511(88), Dec. 12, 1980, 94 Stat. 2928.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2636. Deductions from carriers because of loss or damage to material in transit

An amount deducted from an amount due a carrier because of loss of or damage to material in transit for a military department shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.

(Added Pub. L. 97–258, § 2(b)(5)(B), Sept. 13, 1982, 96 Stat. 1053.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2636	31:489a.	June 25, 1956, ch. 442, § 1, 70 Stat. 336.

The words ''An amount deducted from an amount due'' are substituted for ''Moneys arising from deductions made from'' for clarity. The words ''military or naval'' and ''account of'' are omitted as surplus. The words ''a military department'' are substituted for ''the Departments of the Army, Navy, or Air Force'' because of 10:101(7). The Department of War was designated the Department of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Department of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488).

§ 2637. Transportation in certain areas outside the United States

The Secretary of Defense may authorize the commander of a unified combatant command to use Government owned or leased vehicles to provide transportation in an area outside the United States for members of the uniformed services and Federal civilian employees under the jurisdiction of that commander, and for the dependents of such members and employees, if the commander determines that public or private transportation in such area is unsafe or not available. Such transportation shall be provided in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–510, div. A, title III, § 326(a)(1), Nov. 5, 1990, 104 Stat. 1531.)

PRIOR PROVISIONS

A prior section 2637, added Pub. L. 98–525, title VI, § 614(a), Oct. 19, 1984, 98 Stat. 2540, related to use of passenger motor vehicles of United States for transportation between residences and places of work of senior defense officials, prior to repeal by Pub. L. 99–550, § 2(a)(1), Oct. 27, 1986, 100 Stat. 3070.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 1344.

§ 2638. Transportation of civilian clothing of enlisted members

The Secretary of the military department concerned may provide for the transportation of the civilian clothing of any person entering the armed forces as an enlisted member to the member's home of record.

(Added Pub. L. 98–525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, §708, 93 Stat. 1152.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §808, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §807, 91 Stat. 899.
Sept. 22, 1976, Pub. L. 94–419, title VII, §707, 90 Stat. 1291.
Feb. 9, 1976, Pub. L. 94–212, title VII, §707, 90 Stat. 168.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §807, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §707, 87 Stat. 1038.
Oct. 26, 1972, Pub. L. 92–570, title VII, §707, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, §707, 85 Stat. 727.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §807, 84 Stat. 2030.
Dec. 29, 1969, Pub. L. 91–171, title VI, §607, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, §606, 81 Stat. 242.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§2639. Transportation to and from school for certain minor dependents

Funds appropriated to the Department of Defense may be used to provide minor dependents of members of the armed forces and of civilian officers and employees of the Department of Defense with transportation to and from primary and secondary schools if the schools attended by the dependents are not accessible by regular means of transportation.

(Added Pub. L. 98–525, title XIV, §1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following appropriation acts:
Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8005], 98 Stat. 1904, 1922.
Dec. 8, 1983, Pub. L. 98–212, title VII, §708, 97 Stat. 1438.
Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §708], 96 Stat. 1833, 1850.
Dec. 29, 1981, Pub. L. 97–114, title VII, §708, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §708, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §708, 93 Stat. 1152.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §808, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §807, 91 Stat. 899.
Sept. 22, 1976, Pub. L. 94–419, title VII, §707, 90 Stat. 1291.
Feb. 9, 1976, Pub. L. 94–212, title VII, §707, 90 Stat. 168.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §807, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §707, 87 Stat. 1038.
Oct. 26, 1972, Pub. L. 92–570, title VII, §707, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, §707, 85 Stat. 727.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §807, 84 Stat. 2030.
Dec. 29, 1969, Pub. L. 91–171, title VI, §607, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, §606, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §606, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §606, 79 Stat. 873.
Aug. 19, 1964, Pub. L. 88–446, title V, §506, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §506, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §506, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, §606, 75 Stat. 375.
July 7, 1960, Pub. L. 86–601, title V, §506, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, §606, 73 Stat. 378.
Aug. 22, 1958, Pub. L. 85–724, title VI, §606, 72 Stat. 724.
Aug. 2, 1957, Pub. L. 85–117, title VI, §607, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, §607, 70 Stat. 468.
July 13, 1955, ch. 358, title VI, §609, 69 Stat. 315.
June 30, 1954, ch. 432, title VII, §709, 68 Stat. 351.
Aug. 1, 1953, ch. 305, title VI, §614, 67 Stat. 351.
July 10, 1952, ch. 630, title VI, §616, 66 Stat. 533.
Oct. 18, 1951, ch. 512, title VI, §616, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, §619, 64 Stat. 755.
Oct. 29, 1949, ch. 787, title VI, §625, 63 Stat. 1021.
June 24, 1948, ch. 632, §2, 62 Stat. 667.
July 30, 1947, ch. 357, title I, §2, 61 Stat. 569.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§2640. Charter air transportation of members of the armed forces

(a) REQUIREMENTS.—(1) The Secretary of Defense may not enter into a contract with an air carrier for the charter air transportation of members of the armed forces unless the air carrier—

(A) meets, at a minimum, the safety standards established by the Secretary of Transportation under chapter 447 of title 49;

(B) has at least 12 months of experience operating services in air transportation that are substantially equivalent to the service sought by the Department of Defense; and

(C) undergoes a technical safety evaluation.

(2) For purposes of paragraph (1)(C), a technical safety evaluation—

(A) shall include inspection of a representative number of aircraft; and

(B) shall be conducted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of Transportation.

(b) INSPECTIONS.—The Secretary shall provide for inspections of each air carrier that contracts with the Department of Defense for the charter air transportation of members of the armed forces. The inspections shall be conducted in accordance with standards established by the Secretary, after consultation with the Secretary of Transportation, and shall include, at a minimum, the following:

(1) An on-site capability survey of the air carrier conducted at least once every two years.

(2) A performance evaluation of the air carrier conducted at least once every six months.

(3) A preflight safety inspection of each aircraft conducted at any time during the operation of, but not more than 72 hours before, each internationally scheduled charter mission departing the United States.

(4) A preflight safety inspection of each aircraft used for domestic charter missions conducted to the greatest extent practical.

(5) Operational check-rides on aircraft conducted periodically.

(c) COMMERCIAL AIRLIFT REVIEW BOARD.—The Secretary shall establish a Commercial Airlift Review Board within the Department of Defense. The Board shall consist of personnel from the Department of Defense and other Government personnel as may be appropriate. The duties of the Board shall be—

(1) to make recommendations to the Secretary on suspension and reinstatement of air carriers under subsection (d);

(2) to make recommendations to the Secretary on waivers under subsection (g); and

(3) to carry out such other duties and make recommendations on such other matters as the Secretary considers appropriate.

(d) SUSPENSION AND REINSTATEMENT.—(1) The Secretary shall establish guidelines for the suspension of air carriers under contract with the Department of Defense for the charter air transportation of members of the armed forces and for the reinstatement of air carriers that have been so suspended. The guidelines—

(A) shall require the immediate determination of whether to suspend an air carrier if an aircraft of the air carrier is involved in a fatal accident; and

(B) may require the suspension of an air carrier—

(i) if the carrier is in violation of any order, rule, regulation, or standard prescribed under chapter 447 of title 49; or

(ii) if an aircraft of the air carrier is involved in a serious accident.

(2) The Commercial Airlift Review Board shall make recommendations to the Secretary on suspension and reinstatement under this subsection.

(3) The Secretary shall include in each contract subject to this section the provisions on suspension and reinstatement established under this subsection.

(e) AUTHORITY TO LEAVE UNSAFE AIRCRAFT.—A representative of the Military Airlift Command, the Military Traffic Management Command, or such other agency as may be designated by the Secretary of Defense (or if there is no such representative reasonably available, the senior officer on board a chartered aircraft) may order members of the armed forces to leave a chartered aircraft if the representative (or officer) determines that a condition exists on the aircraft which may endanger the safety of the members.

(f) FAA INFORMATION.—The Secretary shall request the Secretary of Transportation to provide to the Secretary a report on each inspection performed by Federal Aviation Administration personnel, and the status of corrective actions taken, on each aircraft of an air carrier under contract with the Department of Defense for the charter air transportation of members of the armed forces.

(g) WAIVER.—After considering recommendations by the Commercial Airlift Review Board, the Secretary may waive any provision of this section in an emergency.

(h) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section, including requirements and identification of inspecting personnel with respect to preflight safety inspections required by subsection (b)(3).

(i) DEFINITIONS.—In this section:

(1) The terms ''air carrier'', ''aircraft'', ''air transportation'', and ''charter air transportation'' have the meanings given such terms by section 40102(a) of title 49.

(2) The term ''members of the armed forces'' means members of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 99–661, div. A, title XII, § 1204(a)(1), Nov. 14, 1986, 100 Stat. 3969; amended Pub. L. 103–272, § 5(b)(1), July 5, 1994, 108 Stat. 1373.)

AMENDMENTS

1994—Subsecs. (a)(1)(A), (d)(1)(B)(i). Pub. L. 103–272, § 5(b)(1)(A), substituted ''chapter 447 of title 49'' for ''title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)''.

Subsec. (i)(1). Pub. L. 103–272, § 5(b)(1)(B), substituted ''section 40102(a) of title 49'' for ''sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))''.

EFFECTIVE DATE

Section 1204(c) of Pub. L. 99–661 provided that: ''Section 2640 of title 10, United States Code, as added by subsection (a), shall apply only to contracts which are entered into on or after the date on which the regulations required by subsection (b) are prescribed [set out below].''

REGULATIONS

Section 1204(b) of Pub. L. 99–661 required Secretary of Defense, not later than 120 days after Nov. 14, 1986, to prescribe regulations required by this section.

§ 2641. Transportation of certain veterans on Department of Defense aeromedical evacuation aircraft

(a) The Secretary of Defense may provide transportation on an aircraft operating under the aeromedical evacuation system of the Department of Defense for the purpose of transporting a veteran to or from a Department of Veterans Affairs medical facility or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place.

(b) Transportation under this section shall be provided in accordance with an agreement entered into between the Secretary of Defense and the Secretary of Veterans Affairs. Such an agreement shall provide that transportation may be furnished to a veteran (or for the remains of a veteran) on an aircraft referred to in subsection (a) only if—

(1) the Secretary of Veterans Affairs notifies the Secretary of Defense that the veteran needs or has been furnished medical care or services in a Department of Veterans Affairs facility and the Secretary of Veterans Affairs requests such transportation in connection with the travel of such veteran (or of the remains of such veteran) to or from the Department of Veterans Affairs facility where the

care or services are to be furnished or were furnished to such veteran;

(2) there is space available for the veteran (or the remains of the veteran) on the aircraft; and

(3) there is an adequate number of medical and other service attendants to care for all persons being transported on the aircraft.

(c) A veteran is not eligible for transportation under this section unless the veteran is a primary beneficiary within the meaning of clause (A) of section 8111(g)(5) of title 38.

(d)(1) A charge may not be imposed on a veteran (or on the survivors of a veteran) for transportation provided to the veteran (or for the remains of the veteran) under this section.

(2) An agreement under subsection (b) shall provide that the Department of Veterans Affairs shall reimburse the Department of Defense for any costs incurred in providing transportation to veterans (or for the remains of veterans) under this section that would not otherwise have been incurred by the Department of Defense.

(e) In this section, the term ''veteran'' has the meaning given that term in section 101(2) of title 38.

(Added Pub. L. 100–180, div. A, title XII, §1250(a)(1), Dec. 4, 1987, 101 Stat. 1167; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (2), (8), Nov. 29, 1989, 103 Stat. 1602, 1603; Pub. L. 103–337, div. A, title VI, §652(b), title X, §1070(e)(8), Oct. 5, 1994, 108 Stat. 2794, 2859.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §652(b)(1), inserted before period ''or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place''.

Subsec. (b). Pub. L. 103–337, §652(b)(2)(A)(i), inserted ''(or for the remains of a veteran)'' after ''furnished to a veteran'' in introductory provisions.

Subsec. (b)(1). Pub. L. 103–337, §652(b)(2)(A)(ii), inserted ''(or of the remains of such veteran)'' after ''of such veteran''.

Subsec. (b)(2). Pub. L. 103–337, §652(b)(2)(A)(iii), inserted ''(or the remains of the veteran)'' after ''for the veteran''.

Subsec. (c). Pub. L. 103–337, §1070(e)(8), substituted ''section 8111(g)(5) of title 38'' for ''section 5011(g)(5) of title 38''.

Subsec. (d)(1). Pub. L. 103–337, §652(b)(2)(B), inserted ''(or on the survivors of a veteran)'' after ''on a veteran'' and ''(or for the remains of the veteran)'' after ''to the veteran''.

Subsec. (d)(2). Pub. L. 103–337, §652(b)(2)(C), inserted ''(or for the remains of veterans)'' after ''to veterans''.

1989—Subsec. (a). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in introductory provisions and in par. (1).

Subsec. (b)(1). Pub. L. 101–189, §1621(a)(8), substituted ''the Secretary of Veterans Affairs requests'' for ''the Administrator requests''.

Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (d)(2). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

DEADLINE FOR ENTRY INTO TRANSPORTATION AGREEMENT

Section 1250(b) of Pub. L. 100–180 directed Secretary of Defense and Administrator of Veterans' Affairs to enter into an agreement required by this section not later than 60 days after Dec. 4, 1987.

§2642. Reimbursement rate for airlift services provided to Central Intelligence Agency

(a) AUTHORITY.—The Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military airlift services provided by a component of the Department of Defense to the Central Intelligence Agency, if the Secretary of Defense determines that those military airlift services are provided for activities related to national security objectives.

(b) DEFINITION.—In this section, the term ''Department of Defense reimbursement rate'' means the amount charged a component of the Department of Defense by another component of the Department of Defense.

(Added Pub. L. 102–88, title V, §501(a), Aug. 14, 1991, 105 Stat. 435.)

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.
[2661a. Repealed.]
2662. Real property transactions: reports to congressional committees.
2663. Acquisition.
2664. Acquisition of property for lumber production.
2665. Sale of certain interests in land; logs.
2666. Acquisition: land purchase contracts; limitation on commission.
2667. Leases: non-excess property.
[2667a. Repealed.]
2668. Easements for rights-of-way.
2669. Easements for rights-of-way: gas, water, sewer pipe lines.
2670. Licenses: military installations; erection and use of buildings; American National Red Cross.
2671. Military reservations and facilities: hunting, fishing, and trapping.
2672. Acquisition: interests in land when cost is not more than $200,000.
2672a. Acquisition: interests in land when need is urgent.
2673. Acquisition of certain interests in land: availability of funds.
2674. Operation and control of the Pentagon Reservation.
2675. Leases: foreign countries.
2676. Acquisition: limitation.
2677. Options: property required for military construction projects.
2678. Feral horses and burros: removal from military installations.
2679. Representatives of veterans' organizations: use of space and equipment.
2680. Leases: land for special operations activities.
2681. Use of test and evaluation installations by commercial entities.
2682. Facilities for defense agencies.
2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations.

Sec.
[2684. Repealed.]
2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities.
[2686. Repealed.]
2687. Base closures and realignments.
[2688. Repealed.]
2689. Development of geothermal energy on military lands.
2690. Fuel sources for heating systems; prohibition on converting certain heating facilities.
2691. Restoration of land used by permit or lease from other agencies.
2692. Storage and disposal of nondefense toxic and hazardous materials.
2693. Conveyance of certain property.

HISTORICAL AND AMENDMENT NOTES

1962 ACT

This section makes necessary clerical amendments to chapter analysis.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title VIII, § 846(b), Nov. 30, 1993, 107 Stat. 1723, added item 2681.

1992—Pub. L. 102–496, title IV, § 403(a)(2)(B), Oct. 24, 1992, 106 Stat. 3185, substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in item 2662.

1991—Pub. L. 102–190, div. B, title XXVIII, § 2863(a)(2), Dec. 5, 1991, 105 Stat. 1560, added item 2680.

1990—Pub. L. 101–647, title XVIII, § 1802(b), Nov. 29, 1990, 104 Stat. 4850, added item 2693.

Pub. L. 101–510, div. A, title XIV, § 1481(h)(2), div. B, title XXVIII, § 2804(a)(2), Nov. 5, 1990, 104 Stat. 1708, 1785, added items 2674 and 2678.

1988—Pub. L. 100–370, §§ 1(*l*)(4), 2(b)(2), July 19, 1988, 102 Stat. 849, 854, added items 2661 and 2673 and struck out item 2693 ''Prohibition on contracts for performance of firefighting or security-guard functions''.

1987—Pub. L. 100–224, § 5(b)(3), Dec. 30, 1987, 101 Stat. 1538, inserted ''; prohibition on converting certain heating facilities'' after ''systems'' in item 2690.

Pub. L. 100–180, div. A, title XI, § 1112(b)(3), Dec. 4, 1987, 101 Stat. 1147, inserted ''or security-guard'' before ''functions'' in item 2693.

1986—Pub. L. 99–661, div. A, title XII, §§ 1205(a)(2), 1222(a)(2), Nov. 14, 1986, 100 Stat. 3972, 3976, substituted ''Fuel sources for heating systems'' for ''Restriction on fuel sources for new heating systems'' in item 2690 and added item 2693.

Pub. L. 98–115, title VIII, § 807(c)(2), Oct. 11, 1983, 97 Stat. 789; Pub. L. 99–167, title VIII, § 806(a), Dec. 3, 1985, 99 Stat. 988, struck out item 2667a ''Sale and replacement of nonexcess real property'', eff. Oct. 1, 1986.

1985—Pub. L. 99–167, title VIII, § 810(b)(2), Dec. 3, 1985, 99 Stat. 990, substituted ''$200,000'' for ''$100,000'' in item 2672.

Pub. L. 99–145, title XII, § 1224(c)(2), Nov. 8, 1985, 99 Stat. 729, inserted ''; minimum drinking age on military installations'' in item 2683.

1984—Pub. L. 98–407, title VIII, §§ 804(b), 805(b), Aug. 28, 1984, 98 Stat. 1519, 1521, added items 2691 and 2692.

1983—Pub. L. 98–115, title VIII, § 807(a)(2), Oct. 11, 1983, 97 Stat. 788, added item 2667a.

1982—Pub. L. 97–321, title VIII, § 805(b)(4), Oct. 15, 1982, 96 Stat. 1573, substituted in item 2689 ''Development of geothermal energy on military lands'' for ''Development of sources of energy on or for military installations''.

Pub. L. 97–295, § 1(31)(B), Oct. 12, 1982, 96 Stat. 1296, struck out item 2661a ''Appropriations for advance planning of military public works''.

Pub. L. 97–258, § 2(b)(6)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2661a.

Pub. L. 97–214, §§ 6(c)(2), 10(a)(4), (5)(C), July 12, 1982, 96 Stat. 173, 175, struck out items 2661 ''Planning and construction of public works projects by military departments'', 2673 ''Restoration or replacement of facilities damaged or destroyed'', 2674 ''Minor construction projects'', 2678 ''Acquisition of mortgaged housing units'', 2681 ''Construction or acquisition of family housing and community facilities in foreign countries'', 2684 ''Construction of family quarters; limitations on space'', 2686 ''Leases: military family housing'', and 2688 ''Use of solar energy systems in new facilities'', substituted ''Options: property required for military construction projects'' for ''Options: property required for public works projects of military departments'' in item 2677, and added items 2689 and 2690.

1980—Pub. L. 96–513, title V, § 511(89), Dec. 12, 1980, 94 Stat. 2928, struck out item 2680 ''Reimbursement of owners of property acquired for public works projects for moving expenses''.

Pub. L. 96–418, title VIII, § 806(b), Oct. 10, 1980, 94 Stat. 1777, as amended by Pub. L. 97–22, § 11(c), July 10, 1981, 95 Stat. 138, substituted ''$100,000'' for ''$50,000'' in item 2762.

1979—Pub. L. 96–125, title VIII, § 804(a)(2), Nov. 26, 1979, 93 Stat. 948, added item 2688.

1977—Pub. L. 95–82, title V, § 504(a)(2), title VI, §§ 608(b), 612(b), Aug. 1, 1977, 91 Stat. 371, 378, 380, substituted ''Minor construction projects'' for ''Establishment and development of military facilities and installations costing less than $400,000'' in item 2674 and added items 2686 and 2687.

1975—Pub. L. 94–107, title VI, § 607(1), (9), (10), Oct. 7, 1975, 89 Stat. 566, 567, substituted ''$400,000'' for ''$300,000'' in item 2674, struck out ''; structures not on a military base'' in item 2675, and added item 2672a.

1974—Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765, added item 2685.

1973—Pub. L. 93–166, title V, § 509(b), Nov. 29, 1973, 87 Stat. 677, added item 2684.

1971—Pub. L. 92–145, title VII, § 707(2), Oct. 27, 1971, 85 Stat. 411, substituted ''$50,000'' for ''$25,000'' in item 2672.

1970—Pub. L. 91–511, title VI, §§ 607(1), 613(2), Oct. 26, 1970, 84 Stat. 1223, 1226, substituted ''$300,000'' for ''$200,000'' in item 2674, and added item 2683.

1963—Pub. L. 88–174, title VI, § 609(a)(2), Nov. 7, 1963, 77 Stat. 329, added item 2682.

1962—Pub. L. 87–651, title I, § 112(d), title II, § 209(b), Sept. 7, 1962, 76 Stat. 512, 524, substituted ''$25,000'' for ''$5,000'' in item 2672 and added items 2679 to 2681.

1960—Pub. L. 86–500, title V, § 511(2), June 8, 1960, 74 Stat. 187, substituted ''Reports to the Armed Services Committees'' for ''Agreement with Armed Services Committees; reports'' in item 2662.

1958—Pub. L. 85–861, § 1(52), Sept. 2, 1958, 72 Stat. 1461, added items 2672 to 2678.

Pub. L. 85–337, § 4(2), Feb. 28, 1958, 72 Stat. 29, added item 2671.

CROSS REFERENCES

Property records, basis and reports, see section 2721 of this title.

Real property—

Air Force, see section 9771 et seq. of this title.

Army, see section 4771 et seq. of this title.

§ 2661. Miscellaneous administrative provisions relating to real property

(a) Appropriations for operation and maintenance of the active forces shall be available for the following:

(1) The repair of facilities.

(2) The installation of equipment in public and private plants.

(b) The Secretary of Defense and the Secretary of each military department may provide for the following:

(1) The leasing of buildings and facilities (including the payment of rentals for special pur-

pose space at the seat of Government). Rental for such leases may be paid in advance in connection with—

(A) the conduct of field exercises and maneuvers; and

(B) the administration of the Act of July 9, 1942 (43 U.S.C. 315q).

(2) The maintenance of defense access roads which are certified to the Secretary of Transportation as important to the national defense under the provisions of section 210 of title 23.

(Added Pub. L. 100–370, §1(*l*)(3), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2241(a) and 2253(b) of this title are based on Pub. L. 98–212, title VII, §735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

Subsection (b) is based on Pub. L. 99–190, §101(b) [title VIII, §8005(d), (f)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

A prior section 2661, act Aug. 10, 1956, ch. 1041, 70A Stat. 147, related to planning and construction of public works projects by military departments, prior to repeal by Pub. L. 97–214, §7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

STUDY OF ESTABLISHMENT OF LAND MANAGEMENT AND TRAINING CENTER

Pub. L. 103–337, div. A, title III, §329, Oct. 5, 1994, 108 Stat. 2715, provided that:

''(a) STUDY.—The Secretary of the Army shall carry out a study of the feasibility and advisability of establishing a center for the land management activities and land management training activities of the Department of Defense.

''(b) REPORT.—Not later than May 1, 1996, the Secretary shall submit to the congressional defense committees a report on the study required under subsection (a). If the Secretary concludes as a result of the study that establishing the center is feasible and advisable, the report shall include a statement of the Secretary's recommendations for the location of the center and the specific activities to be conducted at the center.''

[§2661a. Repealed. Pub. L. 97–295, §1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

Section, added Pub. L. 97–258, §2(b)(6)(B), Sept. 13, 1982, 96 Stat. 1054, authorized appropriations for advance design of military public works not otherwise authorized and for construction management of foreign government funded projects used primarily by United States armed forces, and required preliminary reports to Congress on military public works whose projected advance costs exceeded a specified level.

The repeal of this section by Pub. L. 97–295 reflected the effect of section 7(2) and (8) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 173), which repealed the source statutes of this section (subsec. (a) was based on acts Sept. 28, 1951, ch. 434, §504, 65 Stat. 364; July 15, 1955, ch. 368, §512, 69 Stat. 352; Dec. 23, 1981, Pub. L. 97–99, §902, 95 Stat. 1381 (31 U.S.C. 723); and subsec. (b) was based on acts Sept. 12, 1966, Pub. L. 89–568, §612, 80 Stat. 756; Dec. 27, 1974, Pub. L. 93–552, §607, 88 Stat. 1763 (31 U.S.C. 723a)) subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(6)(B) of which enacted this section.

§2662. Real property transactions: reports to congressional committees

(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives:

(1) An acquisition of fee title to any real property, if the estimated price is more than $200,000.

(2) A lease of any real property to the United States, if the estimated annual rental is more than $200,000.

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $200,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $200,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $200,000.

(6) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

If a transaction covered by clause (1) or (2) is part of a project, the report must include a summarization of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made. The report required by this subsection to be submitted to the Committees on Armed Services of the Senate and House of Representatives concerning any report of excess real property described in clause (5) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

(b) The Secretary of each military department shall report annually to the Committees on Armed Services of the Senate and the House of Representatives on transactions described in subsection (a) that involve an estimated value of more than the small purchase threshold under section 2304(g) of this title but not more than $200,000.

(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) A statement in an instrument of conveyance, including a lease, that the requirements of

this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $200,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the expiration of thirty days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the Committees on Armed Services of the Senate and the House of Representatives.

(f) Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the Committees on Armed Services of the Senate and the House of Representatives shall be submitted concurrently to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; June 25, 1959, Pub. L. 86–70, § 6(c), 73 Stat. 142; June 8, 1960, Pub. L. 86–500, title V, § 511(1), 74 Stat. 186; July 12, 1960, Pub. L. 86–624, § 4(c), 74 Stat. 411; Oct. 27, 1971, Pub. L. 92–145, title VII, § 707(5), 85 Stat. 412; Oct. 25, 1972, Pub. L. 92–545, title VII, § 709, 86 Stat. 1154; Dec. 27, 1974, Pub. L. 93–552, title VI, § 610, 88 Stat. 1765; Oct. 7, 1975, Pub. L. 94–107, title VI, § 607(5), (6), 89 Stat. 566; Sept. 30, 1976, Pub. L. 94–431, title VI, § 614, 90 Stat. 1367; Oct. 10, 1980, Pub. L. 96–418, title VIII, § 805, 94 Stat. 1777; Sept. 29, 1988, Pub. L. 100–456, div. B, title XXVIII, § 2803, 102 Stat. 2115; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIII, § 1311(6), 104 Stat. 1670; Oct. 24, 1992, Pub. L. 102–496, title IV, § 403(a)(1), (2)(A), 106 Stat. 3185.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2662(a)	40:551.	Sept. 28, 1951, ch. 434, §§ 601–604, 65 Stat. 365, 366.
2662(b)	40:552.	
2662(c)	40:553.	
2662(d)	40:554.	

In subsection (a), the words ''must come to an agreement * * * before entering into any of the following transactions by or for the use of that department:'' are substituted for the words ''shall come into agreement * * * with respect to those real-estate actions by or for the use of the military departments * * * that are described in subsection (a)–(e) of this section, and in the manner therein described''. The last sentence is substituted for the last sentence of 40:551(a) and 40:551(b).

In subsection (a)(4), the words ''or another military department'' are substituted for the words ''including transfers between the military departments''. The words ''under the jurisdiction of the military departments'' are omitted as surplusage.

In subsection (b), the words ''more than $5,000 but not more than $25,000'' are substituted for the words ''between $5,000 and $25,000''. The words ''shall report'' are substituted for the words ''will, in addition, furnish * * * reports''.

In subsection (c), the words ''the United States, Alaska, Hawaii'' are substituted for the words ''the continental United States, the Territory of Alaska, the Territory of Hawaii'', since, as defined in section 101(1) of this title, ''United States'' includes the States and the District of Columbia; and ''Territories'' includes Alaska and Hawaii.

In subsection (d), the words ''A statement * * * that the requirements of this section have been met'' are substituted for the words ''A recital of compliance with this chapter * * * to the effect that the requirements of this chapter have been complied with''. The words ''in the alternative'', ''or lease'', and ''evidence thereof'' are omitted as surplusage.

AMENDMENTS

1992—Pub. L. 102–496, § 403(a)(2)(A), substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in section catchline.

Subsec. (f). Pub. L. 102–496, § 403(a)(1), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–510 substituted ''the small purchase threshold under section 2304(g) of this title'' for ''$5,000''.

1988—Subsecs. (a), (b), (e). Pub. L. 100–456 substituted ''$200,000'' for ''$100,000'' wherever appearing.

1980—Subsecs. (a), (b), (e). Pub. L. 96–418 substituted ''$100,000'' for ''$50,000'' wherever appearing.

1976—Subsec. (a). Pub. L. 94–431 provided that the report on the excess property owned by the United States contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such excess property for property suitable for military purposes and has determined such excess property not suitable for exchange.

1975—Subsec. (b). Pub. L. 94–107, § 607(5), substituted requirement of annual reports for requirement of quarterly reports.

Subsec. (c). Pub. L. 94–107, § 607(6), inserted provisions extending the applicability of the section to Guam, the American Samoa, and the Trust Territory of the Pacific Islands, and, in provisions relating to the inapplicability of the section, inserted reference to any real property acquisition specifically authorized in a Military Construction Authorization Act.

1974—Subsec. (a)(6). Pub. L. 93–552 added par. (6).

1972—Subsec. (e). Pub. L. 92–545 added subsec. (e).

1971—Subsec. (a)(3). Pub. L. 92–145 made the restriction applicable to a license of real property and substituted ''estimated annual fair market rental value'' for ''estimated annual rental''.

1960—Subsec. (a). Pub. L. 86–500 prohibited the Secretary of a military department, or his designee, from entering into any of the transactions listed in subsec. (a) until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives, and increased the amounts in pars. (1) to (5) from $25,000 to $50,000.

Subsec. (b). Pub. L. 86–500 substituted ''$50,000'' for ''$25,000''.

Subsec. (c). Pub. L. 86–624 and Pub. L. 86–500 struck out reference to Hawaii.

Subsec. (d). Pub. L. 86–500 reenacted subsection without change.

1959—Subsec. (c). Pub. L. 86–70 struck out reference to Alaska.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REDUCTION OR REALIGNMENT OF TRAINING BASES

Pub. L. 95–485, title VI, § 602, Oct. 20, 1978, 92 Stat. 1617, prohibited any action to implement any substantial reduction or force structure realignment of the composite of installations, posts, camps, stations, and bases that had as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training as a part of the fiscal year 1979 Defense manpower program unless certain criteria were complied with.

CLOSING OF FACILITIES; CLOSURES OR REALIGNMENTS PUBLICLY ANNOUNCED AFTER SEPTEMBER 30, 1977

Pub. L. 95–82, title VI, § 612(c), Aug. 1, 1977, 91 Stat. 380, provided that: ''Section 611 of the Military Construction Authorization Act, 1966 (Public Law 89–188; 10 U.S.C. 2662 note), and section 612 of the Military Construction Authorization Act, 1977 (Public Law 94–431; 90 Stat. 1366) [which was not classified to the Code], shall be inapplicable in the case of any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977.''

CLOSING OF FACILITIES; REPORTS TO CONGRESS

Pub. L. 89–188, title VI, § 611, Sept. 16, 1965, 79 Stat. 818, as amended by Pub. L. 89–568, title VI, § 613, Sept. 12, 1966, 80 Stat. 757, required a report to Congress and a waiting period in connection with the closing of Defense Department facilities, prior to repeal by Pub. L. 97–214, § 7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 3374.

§ 2663. Acquisition

(a) The Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(3) the development and transmission of power for the operation of plants under clause (2).

(b) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the land to the extent of the interest sought to be acquired.

(c) The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(d) The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(14), 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2663(a)	50:171 (less provisos).	July 2, 1917, ch. 35; restated Apr. 11, 1918, ch. 51, 40 Stat. 518.
2663(b)	50:171 (last proviso).	
2663(c)	50:171 (1st proviso).	
2663(d)	50:171 (2d proviso). [50:171 is made applicable to the Navy by 50:171–1 (less 16th through 21st words)].	Oct. 25, 1951, ch. 563, § 101 (less 22d through 43d words), 65 Stat. 641.

In subsection (a), the words ''brought * * * in a court of proper jurisdiction'' are substituted for the words ''instituted * * * in any court having jurisdiction of such proceedings''. The words ''any interest in land, including temporary use'' are substituted for the words ''any land, temporary use thereof or other interest therein, or right pertaining thereto''. The words ''relating to suits for the condemnation of property'' are omitted as surplusage. The last sentence is substituted for 50:171 (words between semicolon and first proviso). The Act of July 2, 1917, ch. 35, as restated by the Act of April 11, 1918, ch. 51 (last 77 words), are not contained in 50:171. They are also omitted from the revised section as executed.

In subsection (a)(1), the word ''location'' is omitted as surplusage. The words ''operation of'' are substituted for the words ''prosecution of works for''.

In subsection (b), the words ''That when such property is acquired'' are omitted as surplusage. The words ''under subsection (a)'' are substituted for the words ''of any land, temporary use thereof or other use therein or right pertaining thereto to be acquired for any of the purposes aforesaid''. The words ''take and use'' are substituted for the words ''possession thereof may be taken * * * and used for military purposes''.

In subsection (c), the words ''as soon as the owner fixes a price for it'' are substituted for the words ''That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same''. The word ''considers'' is substituted for the words ''which in the opinion''. The words ''contract for or buy'' are substituted for the words ''purchase or enter into a contract''. The words ''without further delay'' are omitted as surplusage.

In subsection (d), the words ''a gift of any interest in land * * * for any purpose named in subsection (a)'' are substituted for 50:171 (last 15 words of 2d proviso).

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 struck out provisions requiring proceedings under this subsection to be in accordance with the law of the State in which the suit is brought.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Procedure in condemnation proceedings, see rule 71A, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Condemnation of realty for sites and other uses, see section 257 of Title 40, Public Buildings, Property, and Works.

Helium, conservation, production, purchase and sale of, authority of Secretary of the Interior, see section 167a of Title 50, War and National Defense.

Original jurisdiction of district courts in condemnation proceedings, see section 1358 of Title 28, Judiciary and Judicial Procedure.

Taking possession and title to lands, etc. in advance of final judgment, see sections 258a to 258e of Title 40, Public Buildings, Property, and Works.

§ 2664. Acquisition of property for lumber production

(a) The Secretary of a military department, the Secretary of Transportation, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Transportation under section 3 of the Maritime Act of 1981 (46 U.S.C. App. 1602).

(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

(1) standing or fallen timber;

(2) sawmills;

(3) camps;

(4) machinery;

(5) logging roads;

(6) rights-of-way;

(7) supplies; and

(8) works, property, or appliances suitable for the production of lumber and timber products.

(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

(e) A person named in subsection (a) may contract for or buy any interest in property named in subsection (b), including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b), including temporary use, for any purpose named in subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 148; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(15), 72 Stat. 1565; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(90), 94 Stat. 2928; Aug. 6, 1981, Pub. L. 97–31, § 12(3)(A), 95 Stat. 153; Oct. 12, 1982, Pub. L. 97–295, § 1(32), 96 Stat. 1296; Apr. 21, 1987, Pub. L. 100–26, § 7(d)(6), 101 Stat. 281.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2664(a)	50:172 (1st par., less 26th through 56th words of 1st sentence; and less last sentence).	July 9, 1918, ch. 143, subch. XV, § 8 (2d par.), 40 Stat. 888.
2664(b)	50:172 (26th through 56th words of 1st sentence of 1st par.).	
2664(c)	50:172 (last sentence of 1st par.).	
2664(d)	[No source].	
2664(e)	[No source].	
2664(f)	[No source].	

In subsection (a), the introductory clause is substituted for 50:172 (1st 25 words, and 2d sentence). The words ''Secretary of Commerce'' and ''Chairman of the Federal Maritime Board'' are substituted for the words ''Chairman of the United States Maritime Commission'' and the words ''functions transferred to the Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273'' are substituted for the words ''[functions of] the United States Maritime Commission'', since the functions of the Chairman of the United States Maritime Commission and of the United States Maritime Commission were transferred to the Secretary of Commerce and the Federal Maritime Board by that Reorganization Plan. The words ''or any one or more of them'' are substituted for the words ''individually or collectively'', to make it clear that any number of them may act and not necessarily one or all of them. The words ''equipment for them'' are substituted for the words ''their apparel or furniture''. The words ''manufacture, or building'' are omitted as covered by the word ''production''. 50:172 (1st 18 words of 3d sentence) is omitted as surplusage.

In subsection (a)(2), the word ''supplies'' is substituted for the words ''materials and equipment'', since the word ''supplies'' is defined in section 101(26) of this title to include material and equipment.

The last sentence of subsection (a) is based on the 27 words preceding the first proviso of 50:171, which is the source for section 2663(a) (last sentence) of this title, and which was incorporated into 50:172 by the cross reference in the first sentence thereof.

In subsection (b), the introductory clause is inserted for clarity. The words ''equipment, materials'' are omitted as covered by the word ''supplies'', since the word ''supplies'' is defined in section 101(26) of this title to include material and equipment.

In subsection (c), the words ''United States District Court for the district in which'' are substituted for the words ''district courts of the United States, where'' to conform to section 132 of title 28.

Subsections (d)–(f) are based on the provisos of 50:171, which are the source for section 2663(b)–(d) of this title, and which were incorporated into 50:172 by the cross reference in the first sentence thereof.

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

1982 ACT

This corrects an error in an amendment to 10:2664(a) made by section 12(3)(A) of the Maritime Act of 1981 (Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 153).

AMENDMENTS

1987—Subsec. (a)(3). Pub. L. 100–26 inserted ''App.'' after ''46 U.S.C.''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''military department, the Secretary of Transportation, or any'' for ''military department'' and all that followed through ''or any'' in text preceding par. (1), substituted ''transferred to the Secretary of Transportation'' for ''transferred to the'' and all that followed in par. (3), clarifying the ambiguity created by the conflicting language of Pub. L. 96–513 and Pub. L. 97–31, and inserted reference to section 3 of the Maritime Act of 1981 (46 U.S.C. 1602).

1981—Subsec. (a). Pub. L. 97–31, in introductory text and par. (3), substituted references to Secretary of Transportation for references to Secretary of Commerce and Maritime Commission. Amendment was executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub. L. 96–513 which substituted different language than language contained in amendatory provisions of Pub. L. 97–31.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Federal Maritime Commission'' for ''Federal Maritime Board'' in two places, and substituted ''under Reorganization Plan No. 7 of 1961, effective August 12, 1961 (75 Stat. 840)'' for ''by 1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273)''.

1958—Subsec. (a). Pub. L. 85–861, §33(a)(15)(A), (B), inserted '', including temporary use,'' after ''subsection (b)'', and struck out provisions requiring all proceedings under this subsection to be in accordance with the laws of the State in which the suit is brought.

Subsec. (e). Pub. L. 85–861, §33(a)(15)(C), inserted ''named in subsection (b), including temporary use,'' after ''property''.

Subsec. (f). Pub. L. 85–861, §33(a)(15)(B), inserted '', including temporary use,'' after ''subsection (b)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CROSS REFERENCES

Original jurisdiction of district courts in condemnation proceedings, see section 1358 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2665 of this title.

§2665. Sale of certain interests in land; logs

(a) The President, through an executive department, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department of Transportation.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Appropriations of the Department of Defense may be reimbursed for all costs of production of forest products pursuant to this section from amounts received as proceeds from the sale of any such property.

(e)(1) Each State in which is located a military installation or facility from which forest products are sold in a fiscal year is entitled at the end of such year to an amount equal to 40 percent of (A) the amount received by the United States during such year as proceeds from the sale of forest products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) during such year attributable to such installation or facility.

(2) The amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.

(3) In a case in which a military installation or facility is located in more than one State or county, the amount paid pursuant to paragraph (1) shall be distributed in a manner proportional to the area of such installation or facility in each State or county.

(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense for the purposes of this section. Balances in the account may be used for costs of the military departments—

(A) for improvements of forest lands;

(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

(C) for natural resources management that implements approved plans and agreements.

(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

(A) reimbursements of appropriations made under subsection (d), and

(B) payments made to States under subsection (e).

(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149; Aug. 1, 1977, Pub. L. 95–82, title VI, §610, 91 Stat. 378; Dec. 12, 1980, Pub. L. 96–513, title V, §511(91), 94 Stat. 2928; Aug. 6, 1981, Pub. L. 97–31, §12(3)(B), 95 Stat. 153; Dec. 23, 1981, Pub. L. 97–99, title IX, §910(a), 95 Stat. 1386; Oct. 12, 1982, Pub. L. 97–295, §1(33), 96 Stat. 1296; Aug. 28, 1984, Pub. L. 98–407, title VIII, §809(a), 98 Stat. 1522; Pub. L. 99–561, §4, Oct. 27, 1986, 100 Stat. 3151.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2665(a)	50:172 (last par., less 36th through 64th, and 73d through 109th, words).	July 9, 1918, ch. 143, subch. XV, §8 (last par.), 40 Stat. 888.

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2665(b)	50:172 (36th through 64th words of last par.).	
2665(c)	50:172 (73d through 90th words of last par.).	
2665(d)	50:172 (91st through 109th words of last par.).	

In subsection (a), the words ''an executive department or the Federal Maritime Board'' are substituted for the words ''any department or the United States Maritime Commission'' to reflect an opinion of the Judge Advocate General of the Army (JAGA 1954/1723) and to name the successor of the United States Maritime Commission. The last 18 words are inserted to reflect that opinion (see the Act of February 20, 1931 (10 U.S.C. 1354)). The words ''and dispose of'' are omitted as surplusage.

In subsection (b), the words ''an executive department or the Federal Maritime Board'' are inserted for clarity and to name the successor of the United States Maritime Commission.

In subsections (a) and (b), the word ''person'' is substituted for the words ''individuals, corporations,'' since section 1 of title 1 defines the word ''person'' to cover both individuals and corporations. The words ''States or'' are omitted as surplusage.

In subsection (c), the words ''the selling agency'' are substituted for the words ''his above representatives selling or disposing of the same''.

1982 Act

This corrects an error in an amendment to 10:2665 made by section 12(3)(B) of the Maritime Act of 1981 (Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 153).

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–561, § 4(1), struck out ''available for operation and maintenance during a fiscal year'' after ''Defense'', substituted ''costs'' for ''expenses'', and struck out ''during such fiscal year'' after ''such property''.

Subsec. (e)(1). Pub. L. 99–561, § 4(2), struck out ''for all expenses of production of forest products'' after ''subsection (d)''.

Subsec. (f)(1). Pub. L. 99–561, § 4(3)(A), (B), substituted ''costs'' for ''expenses'' in provisions preceding subpar. (A) and amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''for expenses to enable operations of forest lands and the production of forest products to continue from the end of one fiscal year through the beginning of the next fiscal year without disruption.''

Subsec. (f)(2), (3). Pub. L. 99–561, § 4(3)(C), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

''(2) Subject to paragraph (3), there shall be deposited into the reserve account not later than December 31 of each year, for credit to the preceding fiscal year, an amount equal to one-half of the amount (if any) remaining of the total amount received by the United States during that fiscal year as proceeds from the sale of forest products after (A) the reimbursement of appropriations of the Department of Defense under subsection (d) for expenses of production of forest products during that fiscal year, and (B) the payment to States under subsection (e) for that fiscal year.

''(3) The balance in the reserve account may not exceed $4,000,000. If a deposit under paragraph (2) would cause the balance in the account to exceed that amount, the deposit shall be made only to the extent the amount of the deposit would not cause the balance in the account to exceed $4,000,000.''

1984—Subsec. (b). Pub. L. 98–407, § 809(a)(1), substituted ''forest products produced on land owned or leased by a military department or the'' for ''logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, or Air Force, or''.

Subsec. (d). Pub. L. 98–407, § 809(a)(2), substituted ''forest products'' for ''lumber and timber products''.

Subsec. (e)(1). Pub. L. 98–407, § 809(a)(3), substituted ''forest products'' for ''timber and timber products'' in two places and ''40 percent'' for ''25 percent''.

Subsec. (f). Pub. L. 98–407, § 809(a)(4), added subsec. (f).

1982—Subsecs. (a), (b). Pub. L. 97–295 substituted ''executive department, may sell'' for ''executive department'' and all that followed through ''may sell'' in subsecs. (a) and (b), and substituted ''Air Force, or Department of Transportation.'' for ''Air Force'' and all that followed in subsec. (b), clarifying the ambiguity created by the conflicting language of Pub. L. 96–513 and Pub. L. 97–31.

1981—Subsecs. (a), (b). Pub. L. 97–31 struck out reference to Federal Maritime Commission in subsec. (a), and substituted ''or Department of Transportation'' for ''or Federal Maritime Commission'' and struck out ''or the Federal Maritime Commission'' after ''department'' in subsec. (b). Amendment was executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub. L. 96–513 which substituted different language than language contained in amendatory provisions of Pub. L. 97–31.

Subsec. (e). Pub. L. 97–99 added subsec. (e).

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Federal Maritime Commission'' for ''Federal Maritime Board''.

1977—Subsec. (d). Pub. L. 95–82 substituted provisions relating to reimbursement of production expenses during any fiscal year from proceeds from sales for property during such fiscal year, for provisions requiring proceeds from sales under subsecs. (a) or (b) of this section to be credited to the appropriations under which the property concerned was procured.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 809(b) of Pub. L. 98–407 provided that:

''(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.

''(2) The amendment made by subsection (a)(2)(B) [probably should be '(a)(3)(B)', which amended subsec. (e)(1) of this section] shall apply with respect to payments to States for fiscal years beginning after September 30, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 910(b) of Pub. L. 97–99 provided that: ''Subsection (e) of section 2665 of title 10, United States Code, as added by subsection (a), shall apply with respect to timber and timber products sold after September 30, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 670a.

§ 2666. Acquisition: land purchase contracts; limitation on commission

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2666	5:174b.	Aug. 1, 1953, ch. 305, § 606, 67 Stat. 350.

§ 2667. Leases: non-excess property

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide, in the case of the lease of real property, for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary; and

(5) may provide, notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, for the improvement, maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as the payment of part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d)(1)(A) All money rentals received pursuant to leases entered into by the Secretary of a military department under this section shall be deposited in a special account in the Treasury established for such military department, except—

(i) amounts paid for utilities and services furnished lessees by the Secretary; and

(ii) money rentals referred to in paragraph (4).

(B) Sums deposited in a military department's special account pursuant to subparagraph (A) shall be available to such military department, as provided in appropriation Acts, as follows:

(i) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the leased property is located.

(ii) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department concerned.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account from which the cost of furnishing the utilities and services was paid.

(3) As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year, the Secretary of Defense shall include—

(A) an accounting of the receipt and use of all money rentals that were deposited and expended under this subsection during the fiscal year preceding the fiscal year in which the request is made; and

(B) a detailed explanation of each lease entered into, and of each amendment made to existing leases, during such preceding fiscal year.

(4) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary of a military department (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(f)(1) Notwithstanding subsection (a)(3), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(g) In this section, the term ''base closure law'' means each of the following:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(3) Section 2687 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 7, 1975, Pub. L. 94–107, title VI, § 607(7), 89 Stat. 566; Sept. 14, 1976, Pub. L. 94–412, title V, § 501(b), 90 Stat. 1258; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(92), 94 Stat. 2928; Oct. 12, 1982, Pub. L. 97–295, § 1(34), 96 Stat. 1296; Oct. 15, 1982, Pub. L. 97–321, title VIII, § 803, 96 Stat. 1572; Nov. 5, 1990, Pub. L. 101–510, div. B, title XXVIII, § 2806, 104 Stat. 1787; Dec. 5, 1991, Pub. L. 102–190, div. B, title XXVIII, § 2862, 105 Stat. 1559; Oct. 23, 1992, Pub. L. 102–484, div. B, title XXVIII, § 2851, 106 Stat. 2625; Nov. 30, 1993, Pub. L. 103–160, div. B, title XXIX, § 2906, 107 Stat. 1920.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2667(a)	5:626s–3 (1st sentence). 10:1270 (1st sentence). 34:522a (1st sentence).	Aug. 5, 1947, ch. 493, §§ 1, 6, 61 Stat. 774, 775; Sept. 28, 1951, ch. 434. § 605 (as applicable to Act of Aug. 5, 1947, ch. 493, § 1), 65 Stat. 366.
2667(b).	5:626s–3 (2d through 6th sentences). 10:1270 (2d through 6th sentences). 34:522a (2d through 6th sentences).	
2667(c)	5:626s–3 (last sentence). 10:1270 (last sentence). 34:522a (last sentence).	
2667(d)	5:626s–3 (less 1st 6 sentences). 10:1270 (less 1st 6 sentences). 34:522a (less 1st 6 sentences).	
2667(e)	5:626s–6. 10:1270d. 34:522e.	

In subsection (a), the words ''considers * * * United States'' are substituted for the words ''shall deem * * * Government''. The words ''and conditions'' are omitted as surplusage. The words ''he considers'' are substituted for the words ''in his judgment''.

In subsection (a)(3), the words ''excess property, as defined by section 472 of title 40'' are substituted for the words ''surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]'', in 5:626s–3, 10:1270, and 34:522a, since the words ''excess property'' are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b)(2), the words ''may give'' are substituted for the first 12 words of the third sentence of 5:626s–3, 10:1270, and 34:522a. The words ''if the lease is revoked to allow the United States to sell the property'' are substituted for the words ''in the event of the revocation of the lease in order to permit sale thereof by the Government''. The words ''under any other provision of law'' are inserted for clarity. The words ''the first right to buy'' are substituted for the words ''a right of first refusal''. The words ''but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law'' are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b)(3), the words ''must permit'' are substituted for the words ''Each such lease shall contain a provision permitting''. The words ''from the lease'' are omitted as surplusage.

In subsection (b)(5), the words ''any such lease'' and ''of such property'' are omitted as surplusage.

In subsection (c), the words ''This section does'' are substituted for the words ''The authority herein granted shall''.

In subsection (e), the words ''of property'' are inserted for clarity. The words ''leased under'' are substituted for the words ''made or created pursuant to''. The words ''may be taxed by State or local governments'' are substituted for the words ''shall be made subject to State or local taxation''. The last sentence is substituted for the last sentence of 5:626s–6, 10:1270d, and 34:522e.

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–160, § 2906(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

''(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

''(2) the Administrator of General Services concurs in the action.''

Subsec. (g). Pub. L. 103–160, § 2906(b), added subsec. (g).

1992—Subsec. (b)(4). Pub. L. 102–484 inserted '', in the case of the lease of real property,'' after ''shall provide''.

1991—Subsec. (b)(3). Pub. L. 102–190, § 2862(a)(1), substituted ''shall permit'' for ''must permit'' and struck out ''and'' at end.

Subsec. (b)(4). Pub. L. 102–190, § 2862(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(5). Pub. L. 102–190, § 2862(a)(2), (4), redesignated par. (4) as (5) and inserted ''improvement,'' before ''maintenance'' and ''the payment of'' before ''part or all''.

Subsec. (d)(3). Pub. L. 102–190, § 2862(b), redesignated subpar. (B) as par. (3), substituted ''As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year'' for ''As part of the request for authorizations of appropriations to such Committees for each fiscal year after fiscal year 1992'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''As part of the request for authorizations of appropriations for fiscal year 1992 to the Committees on Armed Services of the Senate and of the House of Representatives, the Secretary of Defense shall include an explanation of each lease from which money rentals will be received and deposited under this subsection during fiscal year 1991, together with an estimate of the amount to be received from each such lease and an explanation of the anticipated expenditures of such receipts.''

1990—Subsec. (d). Pub. L. 101–510 added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.''

1982—Subsec. (b)(4). Pub. L. 97–295 substituted ''of'' for ''entitled 'An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved'' after ''section 321 of the Act''.

Subsec. (d). Pub. L. 97–321 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), money'' for ''Money'', and added par. (2).

1980—Subsec. (a)(3). Pub. L. 96–513, § 511(92)(A), substituted ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)'' for ''section 472 of title 40''.

Subsec. (b)(4). Pub. L. 96–513, §511(92)(B), substituted ''section 321 of the Act entitled 'An act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (40 U.S.C. 303b),'' for ''section 303b of title 40''.

Subsec. (e). Pub. L. 96–513, §511(92)(C), substituted ''Act'' for ''act''.

Subsec. (f). Pub. L. 96–513, §511(92)(D), substituted ''the Secretary'' for ''The Secretary'', and substituted ''the Administrator of General Services'' for ''The Administrator of the General Services Administration''.

1976—Subsec. (b)(4), (5). Pub. L. 94–412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975—Subsec. (f). Pub. L. 94–107 added subsec. (f).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

LEASING OF DEFENSE PROPERTY; NOTIFICATION OF CONGRESS; WAIVER; REPORT TO CONGRESS; DEFINITION

Pub. L. 96–533, title I, §109(a)–(e), Dec. 16, 1980, 94 Stat. 3137, which provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, was repealed by Pub. L. 97–113, title I, §109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 670a; title 22 section 2796.

[§2667a. Repealed. Pub. L. 98–115, title VIII, §807(c)(1), Oct. 11, 1983, 97 Stat. 786]

Section, added Pub. L. 98–115, title VIII, §807(a)(1), Oct. 11, 1983, 97 Stat. 786, provided for sale and replacement of nonexcess real property.

EFFECTIVE DATE OF REPEAL

Section 807(c) of Pub. L. 98–115, as amended by Pub. L. 99–167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, provided that this section is repealed effective Oct. 1, 1986.

FACILITIES REPLACEMENT MANAGEMENT ACCOUNT ABOLISHED

Section 807(c)(3) of Pub. L. 98–115, as amended by Pub. L. 99–167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, provided that, effective on October 1, 1986, ''the Department of Defense Facilities Replacement Management Account established by such section [10 U.S.C. 2667a] is abolished and any balance in such account is transferred into the Treasury.''

§2668. Easements for rights-of-way

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

(1) railroad tracks;

(2) oil pipe lines;

(3) substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipe lines;

(4) canals;

(5) ditches;

(6) flumes;

(7) tunnels;

(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;

(9) roads and streets; and

(10) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title or by the Act of March 4, 1911 (43 U.S.C. 961).

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse for a two-year period; or

(3) abandonment.

(d) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 19, 1984, Pub. L. 98–525, title XIV, §1405(38), 98 Stat. 2624.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2668(a)	43:931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, §7, 60 Stat. 643; Oct. 25, 1951, ch. 563, §101 (31st through 43d words), 65 Stat. 641.
2668(b).	43:931b (2d proviso of 1st sentence).	
2668(c)	43:931b (3d proviso of 1st sentence).	
2668(d)	43:931b (last sentence) [43:931b is made applicable to the Navy by 50:171–1 (16th through 21st words)].	

In subsection (a), the word ''conditions'' is omitted as covered by the word ''terms''. The description of the persons covered in the opening paragraph and the lands covered in clauses (1)–(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word ''over'' includes the word ''across''. The words ''of

the United States'', ''and empowered'', ''acquired lands'', ''jurisdiction and'', and ''municipality'' are omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words ''for the easement'' are substituted for the words ''for the purpose for which granted''.

In subsections (b) and (c), the word ''easement'' is substituted for the word ''rights-of-way''.

In subsection (c), the word ''terminate'' is substituted for the words ''annulled and forfeited''. The words ''and conditions'' are omitted as covered by the word ''terms''. The words ''two-year period'' are substituted for the words ''a period of two consecutive years''. The words ''of rights granted under authority hereof'' are omitted as surplusage.

AMENDMENTS

1984—Subsec. (a)(10). Pub. L. 98–525 substituted ''the Act of March 4, 1911 (43 U.S.C. 961)'' for ''section 961 of title 43''.

CROSS REFERENCES

Easements for rights-of-way across lands purchased for river, harbor, and flood control improvements granted by Secretary of the Army, see section 558c of Title 33, Navigation and Navigable Waters.

Rights of way and other easements in public lands, see section 931 et seq. of Title 43, Public Lands.

§ 2669. Easements for rights-of-way: gas, water, sewer pipe lines

(a) If the Secretary of a military department finds that it will be in the public interest and will not substantially injure the interest of the United States in the property affected, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, for gas, water, and sewer pipe lines, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse; or

(3) abandonment.

(d) The Secretary concerned shall include in his annual report to the President a complete statement of each easement granted under this section, including the name and address of the grantee, the purpose of the grant, and the benefits accruing to the United States or to the public.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2669(a)	10:1351 (less 2d and last provisos).	May 17, 1926, ch. 313, § 1, 44 Stat. 562; Oct. 25, 1951, ch. 563, § 101 (22d through 30th words), 65 Stat. 641.
2669(b).	[No source].	
2669(c)	10:1351 (2d proviso).	
2669(d)	10:1351 (last proviso).	

Section 101 of the Act of October 25, 1951, cited above, makes the Act of May 17, 1926, cited above, applicable to the Navy.

In subsection (a), the word ''conditions'' is omitted as covered by the word ''terms''. The descriptions of the lands and persons covered are restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 52). The words ''and empowered'', ''of the United States'', ''across'', and ''military reservations and other'' are omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico.

Subsection (b) is inserted for clarity and is based on the above cited opinion.

In subsection (c), the words ''any easement'' are substituted for the words ''such rights-of-way''. The word ''terminate'' is substituted for the words ''annulled and forfeited''. The words ''and conditions'' are omitted as covered by the word ''terms''. The words ''of rights granted under the authority hereof'' are omitted as surplusage.

In subsection (d), the words ''a complete statement of each easement'' are substituted for the words ''a full and complete statement of each and all easements''.

CROSS REFERENCES

Easements for purpose under this section as exception to Secretary of military department's power to grant for other purposes, see section 2668 of this title.

Easements for rights-of-way across lands purchased for river, harbor and flood control improvements granted by Secretary of the Army, see section 558c of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2668 of this title.

§ 2670. Licenses: military installations; erection and use of buildings; American National Red Cross

Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or

(2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this section are available to aid the civilian population in a serious national disaster.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2670	36:12.	June 3, 1916, ch. 134, § 127a (5th par.); added June 4, 1920, ch. 227, subch. I, § 51 (5th par.); restated July 17, 1953, ch. 222, § 3, 67 Stat. 178.

The word ''issue'' is substituted for the words ''grant permission''. The word ''use'' is substituted for the words ''occupy for that purpose''.

CROSS REFERENCES

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.

Cooperation and assistance to armed forces, see section 2602 of this title.

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) The Secretary of Defense shall, with respect to each military installation or facility

under the jurisdiction of any military department in a State or Territory—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) This section does not modify any rights granted by the treaty or otherwise to any Indian tribe or to the members thereof.

(Added Pub. L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29.)

§ 2672. Acquisition: interests in land when cost is not more than $200,000

(a)(1) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than $200,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $200,000.

(b) The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92–145, title VII, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96–418, title VIII, § 806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99–167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99–661, div. A, title XIII, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–456, div. B, title XXVIII, § 2804, Sept. 29, 1988, 102 Stat. 2115.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2672	50:171b.	Aug. 3, 1956, ch. 939, § 406, 70 Stat. 1015.

The word ''land'' is omitted as covered by the words ''any interest in land''. The words ''This section does not apply to the acquisition'' are substituted for the words ''The authority under this section may not, however, be used to acquire''. The words ''as a part of the same project'' are inserted for clarity.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2672	50:171b.	Aug. 20, 1958, Pub. L. 85–685, § 510, 72 Stat. 662.

This section effectuates the amendment to be source law by Pub. L. 85–685.

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–456, § 2804(1), substituted ''The'' for ''Subject to subsection (b), the''.

Subsecs. (b), (c). Pub. L. 100–456, § 2804(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The Secretary of a military department may not enter into a contract under this section for the acquisition of any interest in land the cost of which exceeds $100,000 unless—

''(1) the Secretary has notified the appropriate committees of Congress of his intent to acquire such interest, the cost of the interest, and the reasons for acquiring the interest; and

''(2) a period of 21 days has elapsed from the date the notification is received by the committees.''

1986—Pub. L. 99–661 substituted ''interests'' for ''interest'' in section catchline, designated first sentence of subsec. (a) as par. (1) and, in subpar. (A) of par. (1) as so designated, substituted ''the Secretary'' for ''he or his designate'', designated second sentence of subsec. (a) as par. (2), and designated third sentence of subsec. (a) as subsec. (c).

1985—Pub. L. 99–167 substituted ''interest in land when cost is not more than $200,000'' for ''interests in land when cost is not more than $100,000'' in section catchline and, in text, designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted ''Subject to subsection (b), the'' for ''The'', redesignated cls. (1) and (2) as (A) and (B), substituted ''$200,000'' for ''$100,000'' in two places, and added subsec. (b).

1980—Pub. L. 96–418 substituted ''$100,000'' for ''$50,000'' in section catchline and in text.

1971—Pub. L. 92–145 substituted ''$50,000'' for ''$25,000'' in section catchline and in two places in text, and included in the acquisition authority, the authority to make surveys and acquire interests in land (including temporary use) by gift, purchase, exchange of land owned by the United States, or otherwise, respectively.

1962—Pub. L. 87–651 substituted ''$25,000'' for ''$5,000'' in section catchline and in two places in text, and ''he or his designee determines is needed'' for ''he determines is urgently needed'' in cl. (1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2673 of this title.

§ 2672a. Acquisition: interests in land when need is urgent

(a) The Secretary of a military department may acquire any interest in land that—

(1) he or his designee determines is needed in the interest of national defense;

(2) is required to maintain the operational integrity of a military installation; and

(3) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(b) Appropriations available for military construction may be used for the purposes of this section. The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise. The Secretary of a military department contemplating action under this section shall provide notice, in writing, to the Committees on Armed Services of the Senate and House of Representatives at least 30 days in advance of any action being taken.

(Added Pub. L. 94–107, title VI, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98–525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–525, § 1405(39)(A), (B), designated first sentence as subsec. (a) and substituted in par. (2) thereof ''operational'' for ''operation''.

Subsec. (b). Pub. L. 98–525, § 1405(39)(C), (D), designated second sentence as subsec. (b) and substituted ''this section shall'' for ''this provision will'' and ''Committees on Armed Services'' for ''Armed Services Committees''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 2673. Acquisition of certain interests in land: availability of funds

Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of land or interests in land under section 2672 of this title and for the acquisition of interests in land under section 2675 of this title.

(Added Pub. L. 100–370, § 1(*l*)(1), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

This section and section 2828(h) of this title are based on Pub. L. 98–212, title VII, § 707, Dec. 8, 1983, 97 Stat. 1438.

PRIOR PROVISIONS

A prior section 2673, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459, related to restoration or replacement of facilities damaged or destroyed, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2854 of this title.

§ 2674. Operation and control of the Pentagon Reservation

(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

(2) Before March 1 of each year, the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

(b) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located at the Pentagon Reservation. Such individuals—

(1) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

(2) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials.

(c)(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than $1,000.

(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdemeanor.

(d) The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e)(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the ''Fund''). There shall be deposited into

the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d).

(2) Monies deposited into the Fund shall be available, without fiscal year limitation, for expenditure for real property management, operation, protection, construction, repair, alteration and related activities for the Pentagon Reservation.

(f) In this section:

(1) The term ''Pentagon Reservation'' means that area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

(2) The term ''National Capital Region'' means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(Added Pub. L. 101–510, div. B, title XXVIII, §2804(a)(1), Nov. 5, 1990, 104 Stat. 1784; amended Pub. L. 102–190, div. A, title X, §1061(a)(18), div. B, title XXVIII, §2864, Dec. 5, 1991, 105 Stat. 1473, 1561.)

PRIOR PROVISIONS

A prior section 2674, added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, §112(b), Sept. 7, 1962, 76 Stat. 511; Pub. L. 88–174, title VI, §608, Nov. 7, 1963, 77 Stat. 328; Pub. L. 89–188, title VI, §613, Sept. 16, 1965, 79 Stat. 819; Pub. L. 89–568, title VI, §608, Sept. 12, 1966, 80 Stat. 756; Pub. L. 91–511, title VI, §607(2)–(4), Oct. 26, 1970, 84 Stat. 1224; Pub. L. 92–145, title VII, §707(1), Oct. 27, 1971, 85 Stat. 411; Pub. L. 93–166, title VI, §608(1), Nov. 29, 1973, 87 Stat. 682; Pub. L. 94–107, title VI, §607(2)–(4), Oct. 7, 1975, 89 Stat. 566; Pub. L. 95–82, title VI, §608(a), Aug. 1, 1977, 91 Stat. 377; Pub. L. 95–356, title VI, §603(h)(1), Sept. 8, 1978, 92 Stat. 582; Pub. L. 96–125, title VIII, §801, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–99, title IX, §907, Dec. 23, 1981, 95 Stat. 1385, related to minor construction projects, prior to repeal by Pub. L. 97–214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2805 of this title.

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102–190, §2864, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''shall have the same powers as sheriffs and constables to enforce the laws, rules, or regulations enacted for the protection of persons and property.''

Subsec. (c)(3). Pub. L. 102–190, §1061(a)(18), substituted ''misdemeanor'' for ''misdeameanor''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Public Works and Transportation of House of Representatives changed to Committee on Transportation and Infrastructure by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§2675. Leases: foreign countries

The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to five years, and the rental for each yearly period may be paid from funds appropriated to that military department for that year.

(Added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 91–511, title VI, §608, Oct. 26, 1970, 84 Stat. 1224; Pub. L. 94–107, title VI, §607(10), (11), Oct. 7, 1975, 89 Stat. 567; Pub. L. 95–82, title V, §505(a), Aug. 1, 1977, 91 Stat. 371; Pub. L. 95–356, title V, §503(b), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, §502(b), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, §504(b), Oct. 10, 1980, 94 Stat. 1765; Pub. L. 97–99, title VI, §604, Dec. 23, 1981, 95 Stat. 1374; Pub. L. 97–214, §8, July 12, 1982, 96 Stat. 174; Pub. L. 98–525, title XIV, §1405(40), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, §1322(a)(11), Nov. 5, 1990, 104 Stat. 1671.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2675	5:171z–3.	Aug. 3, 1956, ch. 939, §417, 70 Stat. 1018.

The words ''that are not located on a military base'' are substituted for the words ''off-base''.

AMENDMENTS

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary'' and struck out subsec. (b) which read as follows: ''A lease may not be entered into under this section for structures or related real property in any foreign country if the average estimated annual rental during the term of the lease if more than $250,000 until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.''

1984—Subsec. (b). Pub. L. 98–525 substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–214, §8(a), substituted provisions that the Secretary of a military department may acquire by lease in foreign countries, structures and real property needed for military purposes other than for military family housing for up to a period of five years with the rental to be paid from funds appropriated to that military department for that year, for former provisions that had allowed such leases including leases for military family housing and in the latter case for a period of up to 10 years.

Subsec. (b). Pub. L. 97–214, §8(b), struck out ''or any other provision of law'' after ''into under this section'', and '', family housing facilities,'' after ''for structures''.

Subsecs. (c), (d). Pub. L. 97–214, §8(c), struck out subsec. (c) which provided that a statement in a lease that the requirements of this section have been met, or that the lease is not subject to this section is conclusive, and subsec. (d) which related to limitations on expenditures for the rental of family housing in foreign countries and limitations on the number of family housing units which may be leased in a foreign country at any one time.

1981—Subsec. (d)(1). Pub. L. 97–99, § 604(1), substituted ''250'' for ''150''.

Subsec. (d)(2). Pub. L. 97–99, § 604(2), substituted ''22,000'' for ''17,000''.

1980—Subsec. (d)(1). Pub. L. 96–418 substituted ''Expenditures for the rental of family housing in foreign countries (including the cost of utilities and maintenance and operation) may not exceed $1,115 per month for any unit'' for ''The average unit rental for Department of Defense family housing acquired by lease in foreign countries may not exceed $550 per month for the Department, and in no event shall the rental for any one unit exceed $970 per month, including the costs of operation, maintenance, and utilities''.

1979—Subsec. (d)(1). Pub. L. 96–125, § 502(b)(1), substituted ''$550'' for ''$485'' and ''$970'' for ''$850''.

Subsec. (d)(2). Pub. L. 96–125, § 502(b)(2), substituted ''17,000'' for ''18,000''.

1978—Subsec. (d)(1). Pub. L. 95–356, § 503(b)(1), substituted ''$485'' for ''$435'' and ''$850'' for ''$760''.

Subsec. (d)(2). Pub. L. 95–356, § 503(b)(2), substituted ''18,000'' for ''15,000''.

1977—Subsec. (a). Pub. L. 95–82, § 505(a)(1), inserted provisions relating to military family housing facilities and real property related thereto.

Subsec. (b). Pub. L. 95–82, § 505(a)(2), inserted ''or any other provision of law for structures, family housing facilities, or related real property in any foreign country,'' after ''section''.

Subsec. (d). Pub. L. 95–82, § 505(a)(3), added subsec. (d).

1975—Pub. L. 94–107 struck out reference to structures not on a military base in section catchline, and struck out ''that are not located on a military base and'' after ''structures and real property relating thereto'' in subsec. (a).

1970—Pub. L. 91–511 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 608 of Pub. L. 96–418 provided that: ''Titles I, II, III, IV, and V [enacting section 2775 of this title and section 1594h–3 of Title 42, The Public Health and Welfare, amending this section, section 2686 of this title, and sections 1594a–1 and 1594h–2 of Title 42, and repealing provisions set out as a note under section 4593 of this title] shall take effect on October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 505(c) of Pub. L. 95–82 provided that: ''The amendments made by subsection (a) [amending this section] and the repeal made by subsection (b) [repealing section 507(b) of Pub. L. 93–166, which was not classified to the Code] shall take effect October 1, 1977.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2673 of this title.

§ 2676. Acquisition: limitation

(a) No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.).

(b) Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(c)(1) Except as provided in paragraph (2), the cost authorized for a land acquisition project may be increased by not more than 25 percent of the amount appropriated for the project by Congress or 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser, if the Secretary concerned determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress.

(2) A land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser,

until subsection (d) is complied with.

(d) The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts relating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the appropriate committees of Congress. A contract for the acquisition may then be awarded only after a period of 21 days elapses from the date the notification is received by the committees.

(e) The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 93–166, title VI, § 608(2), Nov. 29, 1973, 87 Stat. 682; Pub. L. 97–214, § 5, July 12, 1982, 96 Stat. 170; Pub. L. 98–407, title VIII, § 802, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 99–661, div. A, title XIII, § 1343(a)(17)(A), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 102–190, div. B, title XXVIII, § 2870(1), Dec. 5, 1991, 105 Stat. 1562.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2676	[Uncodified].	July 27, 1954, ch. 579, §501(b) (less provisos), 68 Stat. 560.

The word ''property'' is substituted for the word ''estate''. The words ''not owned by the United States'' are substituted for the words ''not in Federal ownership''. The words ''or shall be'' are omitted as surplusage.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the act related to management and disposal of Government property are classified to chapter 10 (§471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–190 struck out ''(1)'' after ''be awarded only'' and '', or (2) upon the approval of those committees, if before the end of that period each such committee approves the proposed reduced scope or increased cost'' before period at end.

1986—Subsec. (c)(2)(B). Pub. L. 99–661 amended generally language of subpar. (B) before ''exceeds the amount''. See 1984 Amendment note below.

1984—Subsec. (c)(2). Pub. L. 98–407, §802(1), inserted ''or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land'' in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 98–407, §802(2), inserted ''or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land,''. Insertion of new language following ''the agreed price for the land'' was executed to text notwithstanding directory language of Pub. L. 98–407 that made a reference to a nonexistent comma following ''the agreed price for the land''. See 1986 Amendment note above.

Subsec. (e). Pub. L. 98–407, §802(3), added subsec. (e).

1982—Pub. L. 97–214 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1973—Pub. L. 93–166 made limitation inapplicable to property acquired under authority of Administrator of General Services to acquire property by exchange of Government property.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1343(a)(17)(B) of Pub. L. 99–661 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 802(2) of the Military Construction Authorization Act, 1985 (Public Law 98–407; 98 Stat. 1519) [amending this section].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§2677. Options: property required for military construction projects

(a) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(c)(1) Before acquiring an option on real property under subsection (a), the Secretary of a military department shall review the most recent inventory of real property assets published by the Resolution Trust Corporation under section 21A(b)(11)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(F)) and determine whether any real property listed in the inventory is suitable for use by the military department for the purposes for which the real property is sought.

(2) The requirement for the review referred to in paragraph (1) shall terminate on September 30, 1996.

(Added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 87–554, title VI, §607, July 27, 1962, 76 Stat. 242; Pub. L. 92–145, title VII, §707(4), Oct. 27, 1971, 85 Stat. 412; Pub. L. 94–273, §6(3), Apr. 21, 1976, 90 Stat. 377; Pub. L. 97–214, §10(a)(5)(A), (B), July 12, 1982, 96 Stat. 175; Pub. L. 97–375, title I, §104(b), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–407, title VIII, §803, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 102–190, div. B, title XXVIII, §2861, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 103–35, title II, §201(c)(9), May 31, 1993, 107 Stat. 98.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2677	[Uncodified].	July 27, 1954, ch. 579, §501(b) (provisos), 68 Stat. 560.

In subsections (a) and (b), the word ''property'' is substituted for the word ''estate''.

In subsection (a), the words ''Before acquisition of a parcel of real property is authorized by law'' are substituted for the words ''prior to such authorization''. The word ''acquire'' is substituted for the word ''procure''. The words ''if he considers * * * likely to be needed'' are substituted for the words ''which in their judgment is * * * likely to be required''. The word ''prospective'' is omitted as surplusage.

In subsection (b), the words ''for each year the option is to continue, and proportionately for any other period'' are substituted for the words ''per annum'' for clarity. The words ''not more than 3 percent'' are substituted for the words ''not in excess of 3 per centum''.

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–35 substituted ''section 21A(b)(11)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(F))'' for ''section 21A(b)(12)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(12)(F))''.

1991—Subsec. (c). Pub. L. 102–190 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–407 substituted ''12 percent'' for ''5 percent''.

1982—Pub. L. 97–214, §10(a)(5)(B), substituted ''Options: property required for military construction projects'' for ''Options: property required for public works projects of military departments'' in section catchline.

Subsec. (b). Pub. L. 97–214, §10(a)(5)(A), substituted ''percent'' for ''per centum''.

Subsec. (c). Pub. L. 97–375 repealed subsec. (c) which provided that for each six-month period ending on September 30 or March 31, during which he acquired op-

tions under subsec. (a), the Secretary of each military department report those options to the Committees on Armed Services of the Senate and House of Representatives.

1976—Subsec. (c). Pub. L. 94–273 substituted ''September'' for ''June'' and ''March'' for ''December''.

1971—Subsec. (b). Pub. L. 92–145 struck out requirement that amount paid for option be credited to the purchase price if acquisition of real property is completed.

1962—Subsec. (a). Pub. L. 87–554 provided for acquisition of option after acquisition of real property is authorized by law and for need of option for military rather than public works project.

Subsec. (b). Pub. L. 87–554 struck out ''for each year the option is to continue, and proportionately for any other period'' after ''fair market value of the property'' and provided for credit to purchase price of the property if its acquisition is completed.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2678. Feral horses and burros: removal from military installations

When feral horses or burros are found on an installation under the jurisdiction of the Secretary of a military department, the Secretary may use helicopters and motorized equipment for their removal.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(h)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 101–165, title IX, § 9030, Nov. 21, 1989, 103 Stat. 1135, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(h)(3).

A prior section 2678, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460, related to acquisition of mortgaged housing units, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

§ 2679. Representatives of veterans' organizations: use of space and equipment

(a) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of that Secretary concerned that are on land and from which persons are discharged or released from active duty.

(b) The commanding officer of each of those military installations shall allow the representatives described in subsection (a) to use available space and equipment at that installation.

(c) The regulations prescribed to carry out this section that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Secretary of Veterans Affairs.

(d) This section does not authorize the violation of measures of military security.

(Added Pub. L. 87–651, title I, § 112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 101–189, div. A, title XVI, § 1621(a)(9), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 103–337, div. A, title X, § 1070(e)(9), Oct. 5, 1994, 108 Stat. 2859.)

HISTORICAL AND REVISION NOTES

The new section 2679 of title 10 is transferred from section 1220 of title 10.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''section 5902 of title 38'' for ''section 3402 of title 38''.

1989—Subsec. (a). Pub. L. 101–189, § 1621(a)(9)(A), substituted ''the Secretary of Veterans Affairs, the Secretary concerned'' for ''the Administrator of Veterans' Affairs, the Secretary'', ''recognized by the Secretary of Veterans Affairs'' for ''recognized by the Administrator'', and ''of that Secretary concerned'' for ''of that Secretary''.

Subsec. (c). Pub. L. 101–189, § 1621(a)(9)(B), substituted ''the Secretary of Veterans Affairs'' for ''the Administrator''.

§ 2680. Leases: land for special operations activities

(a) AUTHORITY TO ACQUIRE LEASEHOLDS.—The Secretary of Defense may acquire a leasehold interest in real property if the Secretary determines that the acquisition of such interest is necessary in the interests of national security to facilitate special operations activities of forces of the special operations command established pursuant to section 167 of this title.

(b) LIMITATIONS ON AUTHORITY.—(1) The Secretary may not acquire a leasehold interest in any real property under subsection (a) if the estimated annual rental cost of that real property exceeds $500,000.

(2) The Secretary may not acquire more than five leasehold interests in real property under subsection (a) during a fiscal year.

(3) The term of a leasehold interest acquired under this section shall not exceed one year.

(c) CONSTRUCTION OR MODIFICATION OF FACILITY ON LEASEHOLD.—The Secretary may provide in a lease entered into under this section for the construction or modification of any facility on the leased property in order to facilitate the activities referred to in subsection (a). The total cost of the construction or modification of such facility may not exceed $750,000 in any fiscal year.

(d) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Defense to acquire a leasehold interest in real property under this section shall expire on September 30, 1995. The expiration of that authority shall not affect the validity of any contract entered into under this section on or before that date.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2863(a)(1), Dec. 5, 1991, 105 Stat. 1560; amended Pub. L. 103–160, div. B, title XXVIII, § 2807(a), Nov. 30, 1993, 107 Stat. 1887.)

PRIOR PROVISIONS

A prior section 2680, added Pub. L. 87–651, title I, § 112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 89–718, § 20, Nov. 2, 1966, 80 Stat. 1118, authorized reimbursement of moving expenses to owners of property acquired for public works projects, prior to repeal by Pub. L. 91–646, title II, § 220(a)(3), Jan. 2, 1971, 84 Stat. 1903. See section 4601 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 substituted ''September 30, 1995'' for ''September 30, 1993''.

REPORTING REQUIREMENT

Section 2863(b) of Pub. L. 102–190, as amended by Pub. L. 103–160, div. B, title XXVIII, §2807(b), Nov. 30, 1993, 107 Stat. 1887, provided that: ''Not later than March 1 of each of the years 1994, 1995, and 1996, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report that—

''(1) identifies each leasehold interest acquired during the previous fiscal year by the Secretary under subsection (a) of section 2680 of title 10, United States Code, as added by subsection (a); and

''(2) contains a discussion of each project for the construction or modification of facilities carried out pursuant to subsection (c) of such section during such fiscal year.''

§2681. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

(1) to the public health and safety;

(2) to property (either public or private); or

(3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term ''Major Range and Test Facility Installation'' means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term ''direct costs'' includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(g) TERMINATION OF AUTHORITY.—The authority provided to the Secretary of Defense by subsection (a) shall terminate on September 30, 1998.

(h) REPORT.—Not later than January 1, 1998, the Secretary of Defense shall submit to Congress a report describing the number and purposes of contracts entered into under subsection (a) and evaluating the extent to which the authority under this section is exercised to open Major Range and Test Facility Installations to commercial test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, §846(a), Nov. 30, 1993, 107 Stat. 1722.)

PRIOR PROVISIONS

A prior section, added Pub. L. 87–651, title II, §209(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 88–174, title V, §508, Nov. 7, 1963, 77 Stat. 326; Pub. L. 96–513, title V, §511(93), Dec. 12, 1980, 94 Stat. 2928, related to construction or acquisition of family housing and community facilities in foreign countries, prior to repeal by Pub. L. 97–214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

§2682. Facilities for defense agencies

The maintenance and repair of a real property facility for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense.

(Added Pub. L. 88–174, title VI, §609(a)(1), Nov. 7, 1963, 77 Stat. 329; amended Pub. L. 97–214, §10(a)(7), July 12, 1982, 96 Stat. 175.)

AMENDMENTS

1982—Pub. L. 97–214 substituted ''maintenance and repair'' for ''construction, maintenance, rehabilitation, repair, alteration, addition, expansion, or extension''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to

construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations

(a) Notwithstanding any other provision of law, the Secretary concerned may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

(b) The authority granted by subsection (a) is in addition to and not instead of that granted by any other provision of law.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned shall establish and enforce as the minimum drinking age on a military installation located in a State the age established by the law of that State as the State minimum drinking age.

(2)(A) In the case of a military installation located—

(i) in more than one State; or

(ii) in one State but within 50 miles of another State or Mexico or Canada,

the Secretary concerned may establish and enforce as the minimum drinking age on that military installation the lowest applicable age.

(B) In subparagraph (A), the term ''lowest applicable age'' means the lowest minimum drinking age established by the law—

(i) of a State in which a military installation is located; or

(ii) of a State or jurisdiction of Mexico or Canada that is within 50 miles of such military installation.

(3)(A) The commanding officer of a military installation may waive the requirement of paragraph (1) if such commanding officer determines that the exemption is justified by special circumstances.

(B) The Secretary of Defense shall define by regulations what constitute special circumstances for the purposes of this paragraph.

(4) In this subsection:

(A) The term ''State'' includes the District of Columbia.

(B) The term ''minimum drinking age'' means the minimum age or ages established for persons who may purchase, possess, or consume alcoholic beverages.

(Added Pub. L. 91–511, title VI, § 613(1), Oct. 26, 1970, 84 Stat. 1226; amended Pub. L. 92–545, title VIII, § 707, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–283, § 3, May 14, 1974, 88 Stat. 141; Pub. L. 99–145, title XII, § 1224(a), (b)(1), (c)(1), Nov. 8, 1985, 99 Stat. 728, 729; Pub. L. 99–661, div. A, title XIII, § 1343(a)(18), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–526, title I, § 106(b)(2), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c)(2)(B). Pub. L. 100–526, § 106(b)(2)(A), substituted ''the term 'lowest applicable age' '' for '' 'lowest age' ''.

Subsec. (c)(4)(A). Pub. L. 100–526, § 106(b)(2)(B)(i), substituted ''The term 'State' '' for '' 'State' ''.

Subsec. (c)(4)(B). Pub. L. 100–526, § 106(b)(2)(B)(ii), substituted ''The term 'minimum' '' for '' 'Minimum' ''.

1986—Subsec. (b). Pub. L. 99–661 struck out ''this'' before ''subsection (a)''.

1985—Pub. L. 99–145, § 1224(c)(1), inserted ''; minimum drinking age on military installations'' in section catchline.

Subsec. (b). Pub. L. 99–145, § 1224(b)(1), substituted ''subsection (a)'' for ''section''.

Subsec. (c). Pub. L. 99–145, § 1224(a), added subsec. (c).

1974—Subsec. (a). Pub. L. 93–283 substituted ''Secretary concerned'' for ''Secretary of a military department''.

1972—Subsec. (a). Pub. L. 92–545 provided for relinquishment of all or part of legislative jurisdiction of the United States over lands or interests to Commonwealths, territories, or possessions of the United States.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1224(d) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section and section 473 of Title 50, Appendix, War and National Defense] shall take effect 90 days after the date of the enactment of this Act [Nov. 8, 1985].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 473.

[§ 2684. Repealed. Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

Section, added Pub. L. 93–166, title V, § 509(a), Nov. 29, 1973, 87 Stat. 677, related to construction of family quarters and limitations on space. See section 2826 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) Notwithstanding any other provision of law, the Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.

(c) The Secretary of a military department, with the approval of the Secretary of Defense and the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary of the military department determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d)(1) The Secretary of a military department may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term ''construction'', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(Added Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95–82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97–321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103–337, div. B, title XXVIII, § 2851, Oct. 5, 1994, 108 Stat. 3072.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337, § 2851(b), inserted ''or (d)'' after ''subsection (b)'' in two places.

Subsec. (d). Pub. L. 103–337, § 2851(a), added subsec. (d).

1982—Subsec. (c). Pub. L. 97–321 added subsec. (c).

1977—Subsec. (b). Pub. L. 95–82 struck out ''within the United States'' after ''defense installations''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2486 of this title.

[§ 2686. Repealed. Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

Section, added Pub. L. 95–82, title V, § 504(a)(1), Aug. 1, 1977, 91 Stat. 371; amended Pub. L. 95–356, title V, § 503(a), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(a), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, § 504(a), Oct. 10, 1980, 94 Stat. 1765, related to military family housing leases. See section 2828(a), (b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committees on Armed Services of the Senate and House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d)(1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title.

(e) In this section:

(1) The term ''military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil

works, rivers and harbors projects, or flood control projects.

(2) The term ''civilian personnel'' means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term ''realignment'' includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(4) The term ''legislative day'' means a day on which either House of Congress is in session.

(Added Pub. L. 95–82, title VI, § 612(a), Aug. 1, 1977, 91 Stat. 379; amended Pub. L. 95–356, title VIII, § 805, Sept. 8, 1978, 92 Stat. 586; Pub. L. 97–214, § 10(a)(8), July 12, 1982, 96 Stat. 175; Pub. L. 98–525, title XIV, § 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–145, title XII, § 1202(a), Nov. 8, 1985, 99 Stat. 716; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. B, title XXIX, § 2911, Nov. 5, 1990, 104 Stat. 1819.)

AMENDMENTS

1990—Subsec. (e)(1). Pub. L. 101–510 inserted ''homeport facility for any ship,'' after ''center,'' and substituted ''under the jurisdiction of the Department of Defense, including any leased facility,'' for ''under the jurisdiction of the Secretary of a military department''.

1987—Subsec. (e). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Pub. L. 99–145 amended section generally, thereby applying the section only to closure of bases with more than 300 civilian personnel authorized to be employed and to realignments involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at bases with more than 300 authorized civilian employees, striking out advance public notice required by the Secretary of Defense or the Secretary of the military department concerned when an installation is a candidate for closure or realignment, requiring that all base closure or realignment proposals be submitted to the Committee on Armed Services of the Senate and of the House of Representatives as part of the annual budget request and that such proposals contain an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such action, providing that no irrevocable action to implement the closure to realignment could be taken until the expiration of 30 legislative days or 60 calendar days, whichever is longer, and making explicit the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title and to use funds that would otherwise be available to effect the closure or realignment after expiration of the notice period.

1984—Subsec. (a)(2). Pub. L. 98–525, § 1405(41)(A), substituted ''1,000'' for ''one thousand''.

Subsec. (b)(2). Pub. L. 98–525, § 1405(41)(B), inserted ''(42 U.S.C. 4321 et seq.)''.

Subsec. (b)(4). Pub. L. 98–525, § 1405(41)(C), substituted ''60'' for ''sixty''.

Subsec. (d)(1)(B). Pub. L. 98–525, § 1405(41)(D), substituted ''300'' for ''three hundred''.

1982—Subsec. (d)(1). Pub. L. 97–214 substituted ''a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department'' for ''any camp, post, station, base, yard, or other facility under the authority of the Department of Defense''.

1978—Subsec. (d)(1)(B). Pub. L. 95–356 substituted ''three hundred'' for ''five hundred''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1202(b) of Pub. L. 99–145 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to closures and realignments completed on or after the date of the enactment of this Act [Nov. 8, 1985], except that any action taken to effect or implement any closure or realignment for which a public announcement was made pursuant to section 2687(b)(1) of title 10, United States Code, after April 1, 1985, and before the date of enactment of this Act shall be subject to the provisions of section 2687 of such title as in effect on the day before such date of enactment.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–526, § 1, Oct. 24, 1988, 102 Stat. 2623, provided that: ''This Act [amending sections 1095a, 2324, 2683, and 4415 of this title, enacting provisions set out as notes under this section and sections 154 and 2306 of this title, and amending provisions set out as notes under section 2324 of this title] may be cited as the 'Defense Authorization Amendments and Base Closure and Realignment Act'.''

EFFECTIVE DATE OF 1994 AMENDMENTS BY SECTION 2813(d)(1) AND (2) OF PUB. L. 103–337

Pub. L. 103–337, div. B, title XXVIII, § 2813(d)(3), Oct. 5, 1994, 108 Stat. 3055, provided that: ''The amendments made by paragraphs (1) and (2) [amending section 209(10) of Pub. L. 100–526 and section 2910(9) of Pub. L. 101–510, set out below] shall take effect as if included in the amendments made by section 2918 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1927).''

EFFECTIVE DATE OF 1991 AMENDMENTS BY SECTION 344 OF PUB. L. 102–190

Pub. L. 102–190, div. A, title III, § 344(c), Dec. 5, 1991, 105 Stat. 1346, provided that: ''The amendments made by this section [amending provisions set out as notes below] shall apply with regard to the transfer or disposal of any real property or facility pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, set out below] or the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] occurring on or after the date of the enactment of this Act [Dec. 5, 1991].''

APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF PUB. L. 103–421

Pub. L. 103–421, § 2(e), Oct. 25, 1994, 108 Stat. 4352, provided that:

''(1)(A) Notwithstanding any provision of the 1988 base closure Act or the 1990 base closure Act, as such provision was in effect on the day before the date of the enactment of this Act [Oct. 25, 1994], and subject to subparagraphs (B) and (C), the use to assist the homeless of building and property at military installations approved for closure under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before such date shall be determined in accordance with the

provisions of paragraph (7) of section 2905(b) of the 1990 base closure Act, as amended by subsection (a), in lieu of the provisions of the 1988 base closure Act or the 1990 base closure Act that would otherwise apply to the installations.

''(B)(i) The provisions of such paragraph (7) shall apply to an installation referred to in subparagraph (A) only if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after the date of the enactment of this Act.

''(ii) In the case of an installation for which no redevelopment authority exists on the date of the enactment of this Act, the chief executive officer of the State in which the installation is located shall submit the request referred to in clause (i) and act as the redevelopment authority for the installation.

''(C) The provisions of such paragraph (7) shall not apply to any buildings or property at an installation referred to in subparagraph (A) for which the redevelopment authority submits a request referred to in subparagraph (B) within the time specified in such subparagraph (B) if the buildings or property, as the case may be, have been transferred or leased for use to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act.

''(2) For purposes of the application of such paragraph (7) to the buildings and property at an installation, the date on which the Secretary receives a request with respect to the installation under paragraph (1) shall be treated as the date on which the Secretary of Defense completes the final determination referred to in subparagraph (B) of such paragraph (7).

''(3) Upon receipt under paragraph (1)(B) of a timely request with respect to an installation, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information describing the redevelopment authority for the installation.

''(4)(A) The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall not, during the 60-day period beginning on the date of the enactment of this Act [Oct. 25, 1994], carry out with respect to any military installation approved for closure under the 1988 base closure Act or the 1990 base closure Act before such date any action required of such Secretaries under the 1988 base closure Act or the 1990 base closure Act, as the case may be, or under section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

''(B)(i) Upon receipt under paragraph (1)(A) of a timely request with respect to an installation, the Secretary of Defense shall notify the Secretary of Housing and Urban Development and the Secretary of Health and Human Services that the disposal of buildings and property at the installation shall be determined under such paragraph (7) in accordance with this subsection.

''(ii) Upon receipt of a notice with respect to an installation under this subparagraph, the requirements, if any, of the Secretary of Housing and Urban Development and the Secretary of Health and Human Services with respect to the installation under the provisions of law referred to in subparagraph (A) shall terminate.

''(iii) Upon receipt of a notice with respect to an installation under this subparagraph, the Secretary of Health and Human Services shall notify each representative of the homeless that submitted to that Secretary an application to use buildings or property at the installation to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, that the use of buildings and property at the installation to assist the homeless shall be determined under such paragraph (7) in accordance with this subsection.

''(5)(A) In preparing a redevelopment plan for buildings and property at an installation covered by such paragraph (7) by reason of this subsection, the redevelopment authority concerned shall—

''(A) consider and address specifically any applications for use of such buildings and property to assist the homeless that were received by the Secretary of Health and Human Services under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act [Oct. 25, 1994] and are pending with that Secretary on that date; and

''(B) in the case of any application by representatives of the homeless that was approved by the Secretary of Health and Human Services before the date of enactment of this Act, ensure that the plan adequately addresses the needs of the homeless identified in the application by providing such representatives of the homeless with—

''(i) properties, on or off the installation, that are substantially equivalent to the properties covered by the application;

''(ii) sufficient funding to secure such substantially equivalent properties;

''(iii) services and activities that meet the needs identified in the application; or

''(iv) a combination of the properties, funding, and services and activities described in clause[s] (i), (ii), and (iii).

''(6) In the case of an installation to which the provisions of such paragraph (7) apply by reason of this subsection, the date specified by the redevelopment authority for the installation under subparagraph (D) of such paragraph (7) shall be not less than 1 month and not more than 6 months after the date of the submittal of the request with respect to the installation under paragraph (1)(B).

''(7) For purposes of this subsection:

''(A) The term '1988 base closure Act' means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

PREFERENCE FOR LOCAL RESIDENTS

Pub. L. 103–337, div. A, title VIII, §817, Oct. 5, 1994, 108 Stat. 2820, provided that:

''(a) PREFERENCE ALLOWED.—In entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law, the Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

''(b) DEFINITION.—In this section, the term 'base closure law' means the following:

''(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(c) APPLICABILITY.—Any preference given under subsection (a) shall apply only with respect to contracts entered into after the date of the enactment of this Act [Oct. 5, 1994].

''(d) TERMINATION.—This section shall cease to be effective on September 30, 1997.''

GOVERNMENT RENTAL OF FACILITIES LOCATED ON CLOSED MILITARY INSTALLATIONS

Pub. L. 103–337, div. B, title XXVIII, §2814, Oct. 5, 1994, 108 Stat. 3056, provided that:

''(a) AUTHORIZATION TO RENT BASE CLOSURE PROPERTIES.—To promote the rapid conversion of military installations that are closed pursuant to a base closure law, the Administrator of the General Services may give priority consideration, when leasing space in accordance with the Public Buildings Act of 1959 (40 U.S.C. 601 et seq.) and the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), to facilities of such an installation that have been acquired by a non-Federal entity.

''(b) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).''

REPORT OF EFFECT OF BASE CLOSURES ON FUTURE MOBILIZATION OPTIONS

Pub. L. 103–337, div. B, title XXVIII, § 2815, Oct. 5, 1994, 108 Stat. 3056, provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall prepare a report evaluating the effect of base closures and realignments conducted since January 1, 1987, on the ability of the Armed Forces to remobilize to the end strength levels authorized for fiscal year 1987 by sections 401 [100 Stat. 3859], 403 [enacting provisions set out as a note under section 521 of this title], 411 [amending section 115 of this title and enacting provisions set out as a note under section 12001 of this title], 412 [enacting section 686 [now 12318] of this title], and 421 [100 Stat. 3863] of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3859). The report shall identify those military construction projects, if any, that would be necessary to facilitate such remobilization and any defense assets disposed of under a base closure or realignment, such as air space, that would be difficult to reacquire in the event of such remobilization.

''(b) TIME FOR SUBMISSION.—Not later than January 31, 1996, the Secretary shall submit to the congressional defense committees the report required by this section.''

CONGRESSIONAL FINDINGS WITH RESPECT TO BASE CLOSURE COMMUNITY ASSISTANCE

Pub. L. 103–160, div. B, title XXIX, § 2901, Nov. 30, 1993, 107 Stat. 1909, provided that: ''Congress makes the following findings:

''(1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

''(2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.

''(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

''(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

''(5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a matter arising out of the closure of a military installation under a base closure law, or the reutilization and redevelopment of such an installation, designate for each installation to be closed an individual in such department or agency who shall provide information and assistance to the transition coordinator for the installation designated under section 2915 [set out below] on the assistance, programs, or other activities of such department or agency with respect to the closure or reutilization and redevelopment of the installation.

''(6) The Federal Government may also provide such assistance by accelerating environmental restoration at military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reutilization and redevelopment of such installations by such communities.

''(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value.''

CONSIDERATION OF ECONOMIC NEEDS AND COOPERATION WITH STATE AND LOCAL AUTHORITIES IN DISPOSING OF PROPERTY

Pub. L. 103–160, div. B, title XXIX, § 2903(c), (d), Nov. 30, 1993, 107 Stat. 1915, provided that:

''(c) CONSIDERATION OF ECONOMIC NEEDS.—In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.

''(d) COOPERATION.—The Secretary of Defense shall cooperate with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation.''

REGULATIONS TO CARRY OUT SECTION 204(d) OF PUB. L. 100–526 AND SECTION 2905(e) OF PUB. L. 101–510

Pub. L. 103–160, div. B, title XXIX, § 2908(c), Nov. 30, 1993, 107 Stat. 1924, provided that: ''Not later than nine months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Defense, in consultation with the Administrator of the Environmental Protection Agency, shall prescribe any regulations necessary to carry out subsection (d) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (e) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by subsection (b).''

COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS

Pub. L. 103–160, div. B, title XXIX, § 2911, Nov. 30, 1993, 107 Stat. 1924, provided that: ''Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with

respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''

PREFERENCE FOR LOCAL AND SMALL BUSINESSES IN CONTRACTING

Pub. L. 103–160, div. B, title XXIX, §2912, Nov. 30, 1993, 107 Stat. 1925, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(14), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(a) PREFERENCE REQUIRED.—In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

''(b) DEFINITIONS.—In this section:

''(1) The term 'small business concern' means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'small disadvantaged business concern' means the business concerns referred to in section 8(d)(1) of such Act (15 U.S.C. 637(d)(1)).

''(3) The term 'base closure law' includes section 2687 of title 10, United States Code.''

TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY CLOSURE OF INSTALLATIONS

Pub. L. 103–160, div. B, title XXIX, §2915, Nov. 30, 1993, 107 Stat. 1926, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall designate a transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (c).

''(b) TIMING OF DESIGNATION.—A transition coordinator shall be designated for an installation under subsection (a) as follows:

''(1) Not later than 15 days after the date of approval of closure of the installation.

''(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act [Nov. 30, 1993], not later than 15 days after such date of enactment.

''(c) RESPONSIBILITIES.—A transition coordinator designated with respect to an installation shall—

''(1) encourage, after consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the expeditious environmental cleanup and restoration of the installation by the Department of Defense;

''(2) assist the Secretary of the military department concerned in designating real property at the installation that has the potential for rapid and beneficial reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(3) assist such Secretary in identifying strategies for accelerating completion of environmental cleanup and restoration of the real property designated under paragraph (2);

''(4) assist such Secretary in developing plans for the closure of the installation that take into account the goals set forth in the redevelopment plan for the installation;

''(5) assist such Secretary in developing plans for ensuring that, to the maximum extent practicable, the Department of Defense carries out any activities at the installation after the closure of the installation in a manner that takes into account, and supports, the redevelopment plan for the installation;

''(6) assist the Secretary of Defense in making determinations with respect to the transferability of property at the installation under section 204(b)(5) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by section 2904(a) of this Act, and under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by section 2904(b) of this Act, as the case may be;

''(7) assist the local redevelopment authority with respect to the installation in identifying real property or personal property at the installation that may have significant potential for reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(8) assist the Office of Economic Adjustment of the Department of Defense and other departments and agencies of the Federal Government in coordinating the provision of assistance under transition assistance and transition mitigation programs with community redevelopment activities with respect to the installation;

''(9) assist the Secretary of the military department concerned in identifying property located at the installation that may be leased in a manner consistent with the redevelopment plan for the installation; and

''(10) assist the Secretary of Defense in identifying real property or personal property at the installation that may be utilized to meet the needs of the homeless by consulting with the Secretary of Housing and Urban Development and the local lead agency of the homeless, if any, referred to in section 210(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11320(b)) for the State in which the installation is located.''

DEFINITIONS FOR SUBTITLE A OF TITLE XXIX OF PUB. L. 103–160

Pub. L. 103–160, div. B, title XXIX, §2918(a), Nov. 30, 1993, 107 Stat. 1927, provided that: ''In this subtitle [subtitle A (§§2901 to 2918) of title XXIX of div. B of Pub. L. 103–160, amending sections 2391 and 2667 of this title, enacting provisions set out as notes under this section and section 9620 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section]:

''(1) The term 'base closure law' means the following:

''(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

''(3) The term 'redevelopment authority', in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

''(4) The term 'redevelopment plan', in the case of an installation to be closed under a base closure law, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and rede-

velopment as a result of the closure of the installation.''

LIMITATION ON EXPENDITURES FROM DEFENSE BASE CLOSURE ACCOUNT 1990 FOR MILITARY CONSTRUCTION IN SUPPORT OF TRANSFERS OF FUNCTIONS

Pub. L. 103–160, div. B, title XXIX, § 2922, Nov. 30, 1993, 107 Stat. 1930, provided that:

''(a) LIMITATION.—If the Secretary of Defense recommends to the Defense Base Closure and Realignment Commission pursuant to section 2903(c) of the 1990 base closure Act [set out below] that an installation be closed or realigned, the Secretary identifies in documents submitted to the Commission one or more installations to which a function performed at the recommended installation would be transferred, and the recommended installation is closed or realigned pursuant to such Act, then, except as provided in subsection (b), funds in the Defense Base Closure Account 1990 may not be used for military construction in support of the transfer of that function to any installation other than an installation so identified in such documents.

''(b) EXCEPTION.—The limitation in subsection (a) ceases to be applicable to military construction in support of the transfer of a function to an installation on the 60th day following the date on which the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a notification of the proposed transfer that—

''(1) identifies the installation to which the function is to be transferred; and

''(2) includes the justification for the transfer to such installation.

''(c) DEFINITIONS.—In this section:

''(1) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'Defense Base Closure Account 1990' means the account established under section 2906 of the 1990 base closure Act [set out below].''

SENSE OF CONGRESS ON DEVELOPMENT OF BASE CLOSURE CRITERIA

Pub. L. 103–160, div. B, title XXIX, § 2925, Nov. 30, 1993, 107 Stat. 1932, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense consider, in developing in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510; 10 U.S.C. 2687 note) amended criteria, whether such criteria should include the direct costs of such closures and realignments to other Federal departments and agencies.

''(b) REPORT ON AMENDMENT.—(1) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on any amended criteria developed by the Secretary under section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 after the date of the enactment of this Act [Nov. 30, 1993]. Such report shall include a discussion of the amended criteria and include a justification for any decision not to propose a criterion regarding the direct costs of base closures and realignments to other Federal agencies and departments.

''(2) The Secretary shall submit the report upon publication of the amended criteria in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990.''

MILITARY BASE CLOSURE REPORT

Pub. L. 102–581, title I, § 107(d), Oct. 31, 1992, 106 Stat. 4879, provided that: ''Within 30 days after the date on which the Secretary of Defense recommends a list of military bases for closure or realignment pursuant to section 2903(c) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510; [10] U.S.C. 2687 note), the Administrator of the Federal Aviation Administration shall submit to Congress and the Defense Base Closure and Realignment Commission a report on the effects of all those recommendations involving military airbases, including but not limited to, the effect of the proposed closures or realignments on civilian airports and airways in the local community and region; potential modifications and costs necessary to convert such bases to civilian aviation use; and in the case of air traffic control or radar coverage currently provided by the Department of Defense, potential installations or adjustments of equipment and costs necessary for the Federal Aviation Administration to maintain existing levels of service for the local community and region.''

INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY

Pub. L. 102–484, div. A, title III, § 330, Oct. 23, 1992, 106 Stat. 2371, as amended by Pub. L. 103–160, div. A, title X, § 1002, Nov. 30, 1993, 107 Stat. 1745, provided that:

''(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

''(2) The persons and entities described in this paragraph are the following:

''(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

''(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

''(C) Any other person or entity that acquires such ownership or control.

''(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

''(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

''(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

''(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

''(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

''(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

''(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of defending or settling the claim or action.

''(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on

behalf of that person, the claim for personal injury or property damage.

''(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

''(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

''(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

''(f) DEFINITIONS.—In this section:

''(1) The terms 'facility', 'hazardous substance', 'release', and 'pollutant or contaminant' have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601(9), (14), (22), and (33)).

''(2) The term 'military installation' has the meaning given such term under section 2687(e)(1) of title 10, United States Code.

''(3) The term 'base closure law' means the following:

''(A) The Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510] (10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act [Oct. 23, 1992].''

DEMONSTRATION PROJECT FOR USE OF NATIONAL RELOCATION CONTRACTOR TO ASSIST DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. B, title XXVIII, §2822, Oct. 23, 1992, 106 Stat. 2608, provided that:

''(a) USE OF NATIONAL RELOCATION CONTRACTOR.—Subject to the availability of appropriations therefor, the Secretary of Defense shall enter into a one-year contract with a private relocation contractor operating on a nationwide basis to test the cost-effectiveness of using national relocation contractors to administer the Homeowners Assistance Program. The contract shall be competitively awarded not later than 30 days after the date of the enactment of this Act [Oct. 23, 1992].

''(b) REPORT ON CONTRACT.—Not later than one year after the date on which the Secretary of Defense enters into the contract under subsection (a), the Comptroller General shall submit to Congress a report containing the Comptroller General's evaluation of the effectiveness of using the national contractor for administering the program referred to in subsection (a). The report shall compare the cost and efficiency of such administration with the cost and efficiency of—

''(1) the program carried out by the Corps of Engineers using its own employees; and

''(2) the use of contracts with local relocation companies at military installations being closed or realigned.''

ENVIRONMENTAL RESTORATION REQUIREMENTS AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. A, title III, §334, Dec. 5, 1991, 105 Stat. 1340, provided that:

''(a) REQUIREMENTS FOR INSTALLATIONS TO BE CLOSED UNDER 1989 BASE CLOSURE LIST.—(1) All draft final remedial investigations and feasibility studies related to environmental restoration activities at each military installation described in paragraph (2) shall be submitted to the Environmental Protection Agency not later than 24 months after the date of the enactment of this Act [Dec. 5, 1991].

''(2) Paragraph (1) applies to each military installation—

''(A) which is to be closed pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note); and

''(B) which is on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

''(b) REQUIREMENTS FOR INSTALLATIONS TO BE CLOSED UNDER 1991 BASE CLOSURE LIST.—(1) All draft final remedial investigations and feasibility studies related to environmental restoration activities at each military installation described in paragraph (2) shall be submitted to the Environmental Protection Agency not later than 36 months after the date of the enactment of this Act [Dec. 5, 1991].

''(2) Paragraph (1) applies to each military installation—

''(A) which is to be closed pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510) [set out below] as a result of being recommended for closure in the report transmitted to Congress by the President pursuant to section 2903(e) of such Act on or before September 1, 1991, and

''(B) which is on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

''(c) DEADLINE EXTENSION.—(1) Subject to paragraph (2), the Secretary of Defense, after consultation with the Administrator of the Environmental Protection Agency, may extend for a 6-month period the period of time in which the requirements of subsection (a) or (b) must be met with respect to a military installation covered by subsection (a) or (b) if, within the scope of the Federal Facility Agreement governing cleanup at the installation, any of the following conditions exists at the installation:

''(A) There are newly discovered sites or areas on the installation where a hazardous substance has been released, stored, or disposed of. For purposes of this subparagraph, the term 'newly discovered' means discovered after the expiration of the 6-month period beginning on the date of enactment of this Act [Dec. 5, 1991].

''(B) There are technical engineering difficulties in carrying out the investigations and studies.

''(C) Expediting the investigations and studies would constitute a substantial endangerment to the public health and the environment.

''(D) Adequate funds have not been appropriated to the Department of Defense, or adequate resources are not available to any party to the Federal Facility Agreement, to carry out or oversee the investigations and studies by the applicable deadline.

''(2)(A) An extension under paragraph (1) shall take effect if—

''(i) the Secretary of Defense submits to Congress a notification containing a certification that, to the best of the Secretary's knowledge and belief, the requirements of subsection (a) or (b) cannot be met with respect to the military installation by the applicable deadline because one of the conditions set forth in paragraph (1) exists; and

''(ii) a period of 30 calendar days after receipt by Congress of such notice has elapsed.

''(B) In the computation of the 30-day period under subparagraph (A)(ii), there shall be excluded each day on which either House of Congress is not in session be-

cause of an adjournment of more than 3 calendar days to a day certain.

''(3) The Secretary may grant more than one 6-month extension for a military installation under paragraph (1), but each such extension is subject to paragraphs (1) and (2).

''(d) BUDGET ESTIMATE.—Each year the President shall include, in the budget submitted to Congress for a fiscal year (pursuant to section 1105 of title 31, United States Code), an estimate of the funding levels required for the Department of Defense to comply with this section during the fiscal year for which the budget is submitted.''

WITHHOLDING INFORMATION FROM CONGRESS OR COMPTROLLER GENERAL

Pub. L. 102–190, div. B, title XXVIII, § 2821(i), Dec. 5, 1991, 105 Stat. 1546, provided that: ''Nothing in this section [enacting and amending provisions set out below] or in the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] shall be construed to authorize the withholding of information from Congress, any committee or subcommittee of Congress, or the Comptroller General of the United States.''

CONSISTENCY IN BUDGET DATA

Pub. L. 102–190, div. B, title XXVIII, § 2822, Dec. 5, 1991, 105 Stat. 1546, as amended by Pub. L. 102–484, div. B, title XXVIII, § 2825, Oct. 23, 1992, 106 Stat. 2609, provided that:

''(a) MILITARY CONSTRUCTION FUNDING REQUESTS.—In the case of each military installation considered for closure or realignment or for comparative purposes by the Defense Base Closure and Realignment Commission, the Secretary of Defense shall ensure, subject to subsection (b), that the amount of the authorization requested by the Department of Defense for military construction relating to the closure or realignment of the installation in each of the fiscal years 1992 through 1999 for the following fiscal year does not exceed the estimate of the cost of such construction (adjusted as appropriate for inflation) that was provided to the Commission by the Department of Defense.

''(b) EXPLANATION FOR INCONSISTENCIES.—The Secretary may submit to Congress for a fiscal year a request for the authorization of military construction referred to in subsection (a) in an amount greater than the estimate of the cost of the construction (adjusted as appropriate for inflation) that was provided to the Commission if the Secretary determines that the greater amount is necessary and submits with the request a complete explanation of the reasons for the difference between the requested amount and the estimate.

''(c) INVESTIGATION.—(1) The Inspector General of the Department of Defense shall investigate the military construction for which the Secretary is required to submit an explanation to Congress under subsection (b) if the Inspector General determines (under standards prescribed by the Inspector General) that the difference between the requested amount and the estimate for such construction is significant.

''(2) The Inspector General shall submit to the congressional defense committees a report describing the results of each investigation conducted under paragraph (1).''

DISPOSITION OF FACILITIES OF DEPOSITORY INSTITUTIONS ON MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. B, title XXVIII, § 2825, Dec. 5, 1991, 105 Stat. 1549, as amended by Pub. L. 103–160, div. B, title XXIX, § 2928(a), (b)(1), (c), Nov. 30, 1993, 107 Stat. 1934, 1935, provided that:

''(a) AUTHORITY TO CONVEY FACILITIES.—(1) Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of the military department having jurisdiction over a military installation being closed pursuant to a base closure law may convey all right, title, and interest of the United States in a facility located on that installation to a depository institution that—

''(A) conducts business in the facility; and

''(B) constructed or substantially renovated the facility using funds of the depository institution.

''(2) In the case of the conveyance under paragraph (1) of a facility that was not constructed by the depository institution but was substantially renovated by the depository institution, the Secretary shall require the depository institution to pay an amount determined by the Secretary to be equal to the value of the facility in the absence of the renovations.

''(b) AUTHORITY TO CONVEY LAND.—As part of the conveyance of a facility to a depository institution under subsection (a), the Secretary of the military department concerned shall permit the depository institution to purchase the land upon which that facility is located. The Secretary shall offer the land to the depository institution before offering such land for sale or other disposition to any other entity. The purchase price shall be not less than the fair market value of the land, as determined by the Secretary.

''(c) LIMITATION.—The Secretary of a military department may not convey a facility to a depository institution under subsection (a) if the Secretary determines that the operation of a depository institution at such facility is inconsistent with the redevelopment plan with respect to the installation.

''(d) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term 'base closure law' means the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act [Dec. 5, 1991].

''(e) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' has the meaning given that term in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).''

REPORT ON ENVIRONMENTAL RESTORATION COSTS FOR INSTALLATIONS TO BE CLOSED UNDER 1990 BASE CLOSURE LAW

Pub. L. 102–190, div. B, title XXVIII, § 2827(b), Dec. 5, 1991, 105 Stat. 1551, provided that:

''(1) Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31, United States Code), the Secretary of Defense shall submit to Congress a report on the funding needed for the fiscal year for which the budget is submitted, and for each of the following four fiscal years, for environmental restoration activities at each military installation described in paragraph (2), set forth separately by fiscal year for each military installation.

''(2) The report required under paragraph (1) shall cover each military installation which is to be closed pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510) [set out below].''

SENSE OF CONGRESS REGARDING JOINT RESOLUTION OF DISAPPROVAL OF 1991 BASE CLOSURE COMMISSION RECOMMENDATION

Pub. L. 102–172, title VIII, § 8131, Nov. 26, 1991, 105 Stat. 1208, provided that: ''It is the sense of the Congress that in acting on the Joint Resolution of Disapproval of the 1991 Base Closure Commission's recommendation, the Congress takes no position on whether there has been compliance by the Base Closure Commission, and the Department of Defense with the requirements of the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below]. Further, the vote on the reso-

lution of disapproval shall not be interpreted to imply Congressional approval of all actions taken by the Base Closure Commission and the Department of Defense in fulfillment of the responsibilities and duties conferred upon them by the Defense Base Closure and Realignment Act of 1990, but only the approval of the recommendations issued by the Base Closure Commission.''

REQUIREMENTS FOR BASE CLOSURE AND REALIGNMENT PLANS

Pub. L. 103–335, title VIII, §8040, Sept. 30, 1994, 108 Stat. 2626, provided that: ''The Secretary of Defense shall include in any base closure and realignment plan submitted to Congress after the date of enactment of this Act [Sept. 30, 1994], a complete review for the five-year period beginning on October 1, 1994, which shall include expected force structure and levels for such period, expected installation requirements for such period, a budget plan for such period, the cost savings expected to be realized through realignments and closures of military installations during such period, an economics model to identify the critical local economic sectors affected by proposed closures and realignments of military installations and an assessment of the economic impact in each area in which a military installation is to be realigned or closed.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, §8045, Nov. 11, 1993, 107 Stat. 1450.

Pub. L. 102–396, title IX, §9060, Oct. 6, 1992, 106 Stat. 1915.

Pub. L. 102–172, title VIII, §8063, Nov. 26, 1991, 105 Stat. 1185.

Pub. L. 101–511, title VIII, §8081, Nov. 5, 1990, 104 Stat. 1894.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Part A of title XXIX of div. B of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title III, §344(b)(1), div. B, title XXVIII, §§2821(a)–(h)(1), 2827(a)(1), (2), Dec. 5, 1991, 105 Stat. 1345, 1544–1546, 1551; Pub. L. 102–484, div. A, title X, §1054(b), div. B, title XXVIII, §§2821(b), 2823, Oct. 23, 1992, 106 Stat. 2502, 2607, 2608; Pub. L. 103–160, div. B, title XXIX, §§2902(b), 2903(b), 2904(b), 2905(b), 2907(b), 2908(b), 2918(c), 2921(b), (c), 2923, 2926, 2930(a), Nov. 30, 1993, 107 Stat. 1911, 1914, 1916, 1918, 1921, 1923, 1928–1930, 1932, 1935; Pub. L. 103–337, div. A, title X, §1070(b)(15), (d)(2), div. B, title XXVIII, §§2811, 2812(b), 2813(c)(2), (d)(2), (e)(2), Oct. 5, 1994, 108 Stat. 2857, 2858, 3053–3056; Pub. L. 103–421, §2(a)–(c), (f)(2), Oct. 25, 1994, 108 Stat. 4346–4352, 4354, provided that:

''SEC. 2901. SHORT TITLE AND PURPOSE

''(a) SHORT TITLE.—This part may be cited as the 'Defense Base Closure and Realignment Act of 1990'.

''(b) PURPOSE.—The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

''SEC. 2902. THE COMMISSION

''(a) ESTABLISHMENT.—There is established an independent commission to be known as the 'Defense Base Closure and Realignment Commission'.

''(b) DUTIES.—The Commission shall carry out the duties specified for it in this part.

''(c) APPOINTMENT.—(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise and consent of the Senate.

''(B) The President shall transmit to the Senate the nominations for appointment to the Commission—

''(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

''(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

''(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

''(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with—

''(A) the Speaker of the House of Representatives concerning the appointment of two members;

''(B) the majority leader of the Senate concerning the appointment of two members;

''(C) the minority leader of the House of Representatives concerning the appointment of one member; and

''(D) the minority leader of the Senate concerning the appointment of one member.

''(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

''(d) TERMS.—(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

''(2) The Chairman of the Commission shall serve until the confirmation of a successor.

''(e) MEETINGS.—(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

''(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

''(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

''(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on Armed Services [now Committee on National Security] of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

''(f) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

''(g) PAY AND TRAVEL EXPENSES.—(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

''(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(h) DIRECTOR OF STAFF.—(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

''(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(i) STAFF.—(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

''(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

''(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

''(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

''(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

''(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

''(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may—

''(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

''(ii) review the preparation of such a report; or

''(iii) approve or disapprove such a report.

''(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

''(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

''(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

''(A) There may not be more than 15 persons on the staff at any one time.

''(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

''(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

''(j) OTHER AUTHORITY.—(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

''(2) The Commission may lease space and acquire personal property to the extent funds are available.

''(k) FUNDING.—(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

''(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100–526 [set out below]. Such funds shall remain available until expended.

''(*l*) TERMINATION.—The Commission shall terminate on December 31, 1995.

''(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

''SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

''(a) FORCE-STRUCTURE PLAN.—(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

''(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan—

''(A) a description of the assessment referred to in paragraph (1);

''(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

''(C) a description of the anticipated implementation of such force-structure plan.

''(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

''(b) SELECTION CRITERIA.—(1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

''(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

''(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

''(c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the Federal Register and

transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

''(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

''(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

''(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

''(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning—

''(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

''(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

''(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

''(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

''(B) Subparagraph (A) applies to the following persons:

''(i) The Secretaries of the military departments.

''(ii) The heads of the Defense Agencies.

''(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

''(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

''(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

''(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

''(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

''(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

''(i) makes the determination required by subparagraph (B);

''(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

''(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

''(iv) conducts public hearings on the proposed change.

''(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

''(i) add a military installation to the list of military installations recommended by the Secretary for closure;

''(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

''(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

''(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

''(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

''(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(5) The Comptroller General of the United States shall—

''(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

''(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report

containing a detailed analysis of the Secretary's recommendations and selection process.

''(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

''(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

''(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

''(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

''(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''(a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

''(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

''(2) realign all military installations recommended for realignment by such Commission in each such report;

''(3) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

''(4) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

''(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of—

''(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

''(B) the adjournment of Congress sine die for the session during which such report is transmitted.

''(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

''SEC. 2905. IMPLEMENTATION

''(a) IN GENERAL.—(1) In closing or realigning any military installation under this part, the Secretary may—

''(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

''(B) provide—

''(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

''(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

''(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account;

''(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

''(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

''(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

''(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

''(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);

''(C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)); and

''(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

''(2)(A) Subject to subparagraph (C) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations in effect on the date of the enactment of this Act [Nov. 5, 1990] governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 471 et seq.]; and

''(ii) all regulations in effect on the date of the enactment of this Act governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

''(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

''(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(E) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(3)(A) Not later than 6 months after the date of approval of the closure of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date of approval of the closure of the installation; or

''(IV) ninety days before the date of the closure of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this part as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any personal property located at an installation to be closed under this part if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this part to the redevelopment authority with respect to the installation.

''(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

''(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

''(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this part will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

''(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

''(C)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Admin-

istrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

''(D) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(E) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraph (B), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure of that installation.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence [Oct. 25, 1994], see paragraph (7).

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or com-

mence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) Determinations of the use to assist the homeless of buildings and property located at installations approved for closure under this part after the date of the enactment of this paragraph [Oct. 25, 1994] shall be determined under this paragraph rather than paragraph (6).

''(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

''(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

''(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

''(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

''(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

''(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

''(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

''(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

''(iii) In providing assistance under clause (ii), a redevelopment authority shall—

''(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

''(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

''(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure of the installation.

''(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

''(ii) The date specified under clause (i) shall be—

''(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after that date; and

''(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

''(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

''(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

''(II) notify the Secretary of Defense of the date.

''(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

''(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

''(II) An assessment of the need for the program.

''(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

''(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

''(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

''(VI) An assessment of the time required in order to commence carrying out the program.

''(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

''(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

''(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the approval of the redevelopment plan by the Secretary of Housing and Urban Development under subparagraph (H) or (J).

''(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

''(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

''(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

''(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall include in an application under clause (i) the following:

''(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

''(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

''(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

''(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

''(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

''(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

''(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless—

''(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

''(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

''(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

''(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

''(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

''(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

''(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

''(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

''(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

''(I) an explanation of that determination; and

''(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

''(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

''(I) revise the plan in order to address the determination; and

''(II) submit the revised plan to the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall submit a revised plan under this subparagraph to the Secretary of Housing and Urban Development, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

''(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

''(K) Upon receipt of a notice under subparagraph (H)(vi) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property located at the installation that are identified in the plan as available for use to assist the homeless in accordance with the provisions of the plan. The Secretary of Defense may dispose of such buildings or property directly to the representatives of the homeless concerned or to the redevelopment authority concerned. The Secretary of Defense shall dispose of the buildings and property under this subparagraph without consideration.

''(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

''(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

''(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

''(III) request that each such representative submit to that Secretary the items described in clause (ii); and

''(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a represent-

ative of the homeless submit to that Secretary the following:

''(I) A description of the program of such representative to assist the homeless.

''(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

''(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

''(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

''(iii) The Secretary of Housing and Urban Development shall indicate to the Secretary of Defense and to the redevelopment authority concerned the buildings and property at an installation under clause (i)(IV) to be disposed of not later than 90 days after the date of a receipt of a revised plan for the installation under subparagraph (J).

''(iv) The Secretary of Defense shall dispose of the buildings and property at an installation referred to in clause (iii) to entities indicated by the Secretary of Housing and Urban Development or by transfer to the redevelopment authority concerned for transfer to such entities. Such disposal shall be in accordance with the indications of the Secretary of Housing and Urban Development under clause (i)(IV). Such disposal shall be without consideration.

''(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

''(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

''(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

''(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

''(8)(A) Subject to subparagraph (C), the Secretary may contract with local governments for the provision of police services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part if the Secretary determines that the provision of such services under such contracts is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

''(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

''(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider—

''(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

''(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

''(iii) military installations alternative to those recommended or selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

''(d) WAIVER.—The Secretary of Defense may close or realign military installations under this part without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

''(2) sections 2662 and 2687 of title 10, United States Code.

''(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance

activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''SEC. 2906. ACCOUNT

''(a) IN GENERAL.—(1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account 1990' which shall be administered by the Secretary as a single account.

''(2) There shall be deposited into the Account—

''(A) funds authorized for and appropriated to the Account;

''(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;

''(C) except as provided in subsection (d), proceeds received from the transfer or disposal of any property at a military installation closed or realigned under this part; and

''(D) proceeds received after September 30, 1995, from the transfer or disposal of any property at a military installation closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(b) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

''(c) REPORTS.—(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

''(B) The report for a fiscal year shall include the following:

''(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

''(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

''(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

''(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

''(I) any failure to carry out military construction projects that were so proposed; and

''(II) any expenditures for military construction projects that were not so proposed.

''(2) Unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this part shall be held in the Account until transferred by law after the congressional defense committees receive the report transmitted under paragraph (3).

''(3) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part, the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

''(A) all the funds deposited into and expended from the Account or otherwise expended under this part; and

''(B) any amount remaining in the Account.

''(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(4)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

''(A) commissary stores; and

''(B) real property and facilities for nonappropriated fund instrumentalities.

''(4) As used in this subsection:

''(A) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(B) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(C) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the termination of the authority of the Secretary to carry out a closure or realignment under this part.

''SEC. 2907. REPORTS

''As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress—

''(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term 'joint resolution' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on ———', the blank space being filled in with the appropriate date; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.'.

''(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services [now Committee on National Security] of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

''(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending on December 31, 1995, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

''(b) RESTRICTION.—Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)—

''(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

''(2) to carry out any closure or realignment of a military installation inside the United States.

''(c) EXCEPTION.—Nothing in this part affects the authority of the Secretary to carry out—

''(1) closures and realignments under title II of Public Law 100–526 [set out below]; and

''(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

''SEC. 2910. DEFINITIONS

''As used in this part:

''(1) The term 'Account' means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

''(2) The term 'congressional defense committees' means the Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives [Committee on Armed Services of the House of Representatives now Committee on National Security].

''(3) The term 'Commission' means the Commission established by section 2902.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

''(5) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

''(6) The term 'Secretary' means the Secretary of Defense.

''(7) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(8) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

''(9) The term 'redevelopment authority', in the case of an installation to be closed under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(10) The term 'redevelopment plan' in the case of an installation to be closed under this part, means a plan that—

''(A) is agreed to by the local redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

''(10)[(11)] The term 'representative of the homeless' has the meaning given such term in section 501(h)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(h)(4)).

''SEC. 2911. CLARIFYING AMENDMENT

''[Amended this section.]''

[For effective date of amendment by section 2813(d)(2) of Pub. L. 103–337 to section 2910 of Pub. L. 101–510, set out above, see Effective Date of 1994 Amendments by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[Section 2902(c) of Pub. L. 103–160 provided that: ''For the purposes of section 2905(b)(3) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), the date of approval of closure of any installation approved for closure before the date of the enactment of this Act [Nov. 30, 1993] shall be deemed to be the date of the enactment of this Act.'']

[Section 2904(c) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall make the determinations required under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), in the case of installations approved for closure under such Act [part A of title XXIX of div. B of Pub. L. 101–510, set out above] before the date of the enactment of this Act [Nov. 30, 1993], not later than 6 months after the date of the enactment of this Act.'']

[Section 2930(b) of Pub. L. 103–160 provided that: ''The amendment made by this section [amending section 2903(d)(1) of Pub. L. 101–510 set out above] shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after the date of the enactment of this Act [Nov. 30, 1993].'']

[For effective date of amendments by section 344(b)(1) of Pub. L. 102–190 to section 2906 of Pub. L. 101–510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Section 2821(h)(2) of Pub. L. 102–190 provided that: ''The amendment made by paragraph (1) [amending section 2910 of Pub. L. 101–510 set out above] shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 [section 2910 of Pub. L. 101–510] on that date.'']

[Section 2827(a)(3) of Pub. L. 102–190 provided that: ''The amendments made by this subsection [amending sections 2905 and 2906 of Pub. L. 101–510 set out above] shall take effect on the date of the enactment of this Act [Dec. 5, 1991].'']

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

CLOSURE OF FOREIGN MILITARY INSTALLATIONS

Section 2921 of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title III, § 344(b)(2), Dec. 5, 1991, 105 Stat. 1345; Pub. L. 102–484, div. B, title XXVIII, §§ 2821(c), 2827, Oct. 23, 1992, 106 Stat. 2608, 2609; Pub. L. 103–160, div. B, title XXIX, § 2924(b), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 103–337, div. A, title XIII, § 1305(c), div. B, title XXVIII, § 2817, Oct. 5, 1994, 108 Stat. 2891, 3057, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of the Congress that—

''(1) the termination of military operations by the United States at military installations outside the

United States should be accomplished at the discretion of the Secretary of Defense at the earliest opportunity;

''(2) in providing for such termination, the Secretary of Defense should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries;

''(3) the Secretary of Defense, acting through the military component commands or the sub-unified commands to the combatant commands, should be the lead official in negotiations relating to determining and receiving such consideration; and

''(4) the determination of the fair market value of such improvements released to host countries in whole or in part by the United States should be handled on a facility-by-facility basis.

''(b) RESIDUAL VALUE.—(1) For each installation outside the United States at which military operations were being carried out by the United States on October 1, 1990, the Secretary of Defense shall transmit, by no later than June 1, 1991, an estimate of the fair market value, as of January 1, 1991, of the improvements made by the United States at facilities at each such installation.

''(2) For purposes of this section:

''(A) The term 'fair market value of the improvements' means the value of improvements determined by the Secretary on the basis of their highest use.

''(B) The term 'improvements' includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

''(c) ESTABLISHMENT OF SPECIAL ACCOUNT.—(1) There is established on the books of the Treasury a special account to be known as the 'Department of Defense Overseas Military Facility Investment Recovery Account'. Except as provided in subsection (d), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into such account.

''(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with—

''(A) facility maintenance and repair and environmental restoration at military installations in the United States; and

''(B) facility maintenance and repair and compliance with applicable environmental laws at military installations outside the United States that the Secretary anticipates will be occupied by the Armed Forces for a long period.

''(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

''(d) AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) In the case of a payment referred to in subsection (c)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(4)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, set out below]. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

''(2) As used in this subsection:

''(A) The term 'nonappropriated funds' means funds received from—

''(i) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code; or

''(ii) a nonappropriated fund instrumentality.

''(B) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(e) NEGOTIATIONS FOR PAYMENTS-IN-KIND.—(1) Before the Secretary of Defense enters into negotiations with a host country regarding the acceptance by the United States of any payment-in-kind in connection with the release to the host country of improvements made by the United States at military installations in the host country, the Secretary shall submit to the appropriate congressional committees a written notice regarding the intended negotiations.

''(2) The notice shall contain the following:

''(A) A justification for entering into negotiations for payments-in-kind with the host country.

''(B) The types of benefit options to be pursued by the Secretary in the negotiations.

''(C) A discussion of the adjustments that are intended to be made in the future-years defense program or in the budget of the Department of Defense for the fiscal year in which the notice is submitted or the following fiscal year in order to reflect costs that it may no longer be necessary for the United States to incur as a result of the payments-in-kind to be sought in the negotiations.

''(3) For purposes of this subsection, the appropriate congressional committees are—

''(A) the Committee on Armed Services [now Committee on National Security], the Committee on Appropriations, and the Defense Subcommittees of the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Appropriations, and the Defense Subcommittees of the Committee on Appropriations of the Senate.

''(f) REPORT ON STATUS AND USE OF SPECIAL ACCOUNT.—Not later than January 15 of each year, the Secretary of Defense shall submit to the congressional defense committees a report on the operations of the Department of Defense Overseas Military Facility Investment Recovery Account during the preceding fiscal year and proposed uses of funds in the special account during the next fiscal year. The report shall include the following:

''(1) The amount of each deposit in the account during the preceding fiscal year, and the source of the amount.

''(2) The balance in the account at the end of that fiscal year.

''(3) The amounts expended from the account by each military department during that fiscal year.

''(4) With respect to each military installation for which money was deposited in the account as a result of the release of real property or improvements of the installation to a host country during that fiscal year—

''(A) the total amount of the investment of the United States in the installation, expressed in terms of constant dollars of that fiscal year;

''(B) the depreciated value (as determined by the Secretary of a military department under regulations to be prescribed by the Secretary of Defense) of the real property and improvements that were released; and

''(C) the explanation of the Secretary for any difference between the benefits received by the United States for the real property and improvements and the depreciated value (as so determined) of that real property and improvements.

''(5) A list identifying all military installations outside the United States for which the Secretary proposes to make expenditures from the Department of Defense Overseas Facility Investment Recovery Account under subsection (c)(2)(B) during the next fiscal year and specifying the amount of the proposed expenditures for each identified military installation.

''(6) A description of the purposes for which the expenditures proposed under paragraph (5) will be made and the need for such expenditures.

''(g) OMB REVIEW OF PROPOSED SETTLEMENTS.—(1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of $10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

''(2) Each year, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report on each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the value of the improvements to be released pursuant to the proposed agreement did not exceed $10,000,000.

''(h) CONGRESSIONAL OVERSIGHT OF PAYMENTS-IN-KIND.—(1) Not less than 30 days before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

''(A) A description of the military construction project or facility improvement project, as the case may be.

''(B) A certification that the project is needed by United States forces.

''(C) An explanation of how the project will aid in the achievement of the mission of those forces.

''(D) A certification that, if the project were to be carried out by the Department of Defense, appropriations would be necessary for the project and it would be necessary to provide for the project in the next future-years defense program.

''(2) Not less than 30 days before concluding an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

''(A) A description of each activity to be covered by the payment-in-kind.

''(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments.

''(C) A certification that, unless the payment-in-kind is accepted or funds are appropriated for payment of such costs, the military mission of the United States forces with respect to the host nation concerned will be adversely affected.''

[For effective date of amendment by section 344(b)(2) of Pub. L. 102–190 to section 2921 of Pub. L. 101–510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

TASK FORCE REPORT

Pub. L. 102–380, § 125, Oct. 5, 1992, 106 Stat. 1372, provided that:

''(a) The environmental response task force established in section 2923(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821) [set out below] shall reconvene and shall, until the date (as determined by the Secretary of Defense) on which all base closure activities required under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below] are completed—

''(1) monitor the progress of relevant Federal and State agencies in implementing the recommendations of the task force contained in the report submitted under paragraph (1) of such section; and

''(2) annually submit to the Congress a report containing—

''(A) recommendations concerning ways to expedite and improve environmental response actions at military installations (or portions of installations) that are being closed or subject to closure under such title;

''(B) any additional recommendations that the task force considers appropriate; and

''(C) a summary of the progress made by relevant Federal and State agencies in implementing the recommendations of the task force.

''(b) The task force shall consist of—

''(1) the individuals (or their designees) described in section 2923(c)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821); and

''(2) a representative of the Urban Land Institute (or such representative's designee), appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate.''

Section 2923(c) of Pub. L. 101–510 provided that:

''(1) Not later than 12 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall submit to Congress a report containing the findings and recommendations of the task force established under paragraph (2) concerning—

''(A) ways to improve interagency coordination, within existing laws, regulations, and administrative policies, of environmental response actions at military installations (or portions of installations) that are being closed, or are scheduled to be closed, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [set out below]; and

''(B) ways to consolidate and streamline, within existing laws and regulations, the practices, policies, and administrative procedures of relevant Federal and State agencies with respect to such environmental response actions so as to enable those actions to be carried out more expeditiously.

''(2) There is hereby established an environmental response task force to make the findings and recommendations, and to prepare the report, required by paragraph (1). The task force shall consist of the following (or their designees):

''(A) The Secretary of Defense, who shall be chairman of the task force.

''(B) The Attorney General.

''(C) The Administrator of the General Services Administration.

''(D) The Administrator of the Environmental Protection Agency.

''(E) The Chief of Engineers, Department of the Army.

''(F) A representative of a State environmental protection agency, appointed by the head of the National Governors Association.

''(G) A representative of a State attorney general's office, appointed by the head of the National Association of Attorney Generals.

''(H) A representative of a public-interest environmental organization, appointed by the Speaker of the House of Representatives.''

COMMUNITY PREFERENCE CONSIDERATION IN CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Section 2924 of Pub. L. 101–510 provided that: ''In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.''

CONTRACTS FOR CERTAIN ENVIRONMENTAL RESTORATION ACTIVITIES

Section 2926 of Pub. L. 101–510, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(a) ESTABLISHMENT OF MODEL PROGRAM.—Not later than 90 days after the date of enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall establish a model program to improve the efficiency and effectiveness of the base closure environmental restoration program.

''(b) ADMINISTRATOR OF PROGRAM.—The Secretary shall designate the Deputy Assistant Secretary of Defense for Environment as the Administrator of the model program referred to in subsection (a). The Deputy Assistant Secretary shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology.

''(c) APPLICABILITY.—This section shall apply to environmental restoration activities at installations selected by the Secretary pursuant to the provisions of subsection (d)(1).

''(d) PROGRAM REQUIREMENTS.—In carrying out the model program, the Secretary of Defense shall:

''(1) Designate for the model program two installations under his jurisdiction that have been designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [see Short Title of 1988 Amendment note above] and for which preliminary assessments, site inspections, and Environmental Impact Statements required by law or regulation have been completed. The Secretary shall designate only those installations which have satisfied the requirements of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [set out below].

''(2) Compile a prequalification list of prospective contractors for solicitation and negotiation in accordance with the procedures set forth in title IX of the Federal Property and Administrative Services Act (Public Law 92–582; 40 U.S.C. 541 et seq., as amended) [probably means title IX of the Federal Property and Administrative Services Act of 1949, act June 30, 1949]. Such contractors shall satisfy all applicable statutory and regulatory requirements. In addition, the contractor selected for one of the two installations under this program shall indemnify the Federal Government against all liabilities, claims, penalties, costs, and damages caused by (A) the contractor's breach of any term or provision of the contract; and (B) any negligent or willful act or omission of the contractor, its employees, or its subcontractors in the performance of the contract.

''(3) Within 180 days after the date of enactment of this Act [Nov. 5, 1990], solicit proposals from qualified contractors for response action (as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)) at the installations designated under paragraph (1). Such solicitations and proposals shall include the following:

''(A) Proposals to perform response action. Such proposals shall include provisions for receiving the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies.

''(B) To the maximum extent possible, provisions offered by single prime contractors to perform all phases of the response action, using performance specifications supplied by the Secretary of Defense and including any safeguards the Secretary deems essential to avoid conflict of interest.

''(4) Evaluate bids on the basis of price and other evaluation criteria.

''(5) Subject to the availability of authorized and appropriated funds to the Department of Defense, make contract awards for response action within 120 days after the solicitation of proposals pursuant to paragraph (3) for the response action, or within 120 days after receipt of the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies, whichever is later.

''(e) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the model program shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620).

''(f) EXPEDITED AGREEMENTS.—The Secretary shall, with the concurrence of the Administrator of the Environmental Protection Agency, assure compliance with all applicable Federal statutes and regulations and, in addition, take all reasonable and appropriate measures to expedite all necessary administrative decisions, agreements, and concurrences.

''(g) REPORT.—The Secretary of Defense shall include a description of the progress made during the preceding fiscal year in implementing and accomplishing the goals of this section within the annual report to Congress required by section 2706 of title 10, United States Code.

''(h) APPLICABILITY OF EXISTING LAW.—Nothing in this section affects or modifies, in any way, the obligations or liability of any person under other Federal or State law, including common law, with respect to the disposal or release of hazardous substances or pollutants or contaminants as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).''

CONSIDERATION OF DEPARTMENT OF DEFENSE HOUSING FOR COAST GUARD

Pub. L. 101–225, title II, §216, Dec. 12, 1989, 103 Stat. 1915, provided that: ''Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 [note]).''

FIVE-YEAR PLAN FOR ENVIRONMENTAL RESTORATION AT BASES TO BE CLOSED

Pub. L. 101–189, div. A, title III, §353, Nov. 29, 1989, 103 Stat. 1423, directed Secretary of Defense to develop a comprehensive five-year plan for environmental restoration at military installations that would be closed or realigned during fiscal years 1991 through 1995, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. 100–526, set out below, and, at same time President submits to Congress budget for fiscal year 1991 pursuant to 31 U.S.C. 1105, to submit to Congress a report on the five-year plan.

PROHIBITION ON REDUCING END STRENGTH LEVELS FOR MEDICAL PERSONNEL AS A RESULT OF BASE CLOSURES AND REALIGNMENTS

Pub. L. 101–189, div. A, title VII, §723, Nov. 29, 1989, 103 Stat. 1478, provided that:

''(a) PROHIBITION.—The end strength levels for medical personnel for each component of the Armed Forces, and the number of civilian personnel of the Department of Defense assigned to military medical facilities, may not be reduced as a result of the closure or realignment of a military installation under section 2687 of title 10, United States Code, or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(b) MEDICAL PERSONNEL DEFINED.—For purposes of subsection (a), the term 'medical personnel' has the meaning given that term in subparagraph (D) of section 115(b)(1) of title 10, United States Code.''

USE OF CLOSED BASES FOR PRISONS AND DRUG TREATMENT FACILITIES

Pub. L. 101–189, div. B, title XXVIII, § 2832, Nov. 29, 1989, 103 Stat. 1660, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the war on drugs is one of the highest priorities of the Federal Government;

''(2) to effectively wage the war on drugs, adequate penal and correctional facilities and a substantial increase in the number and capacity of drug treatment facilities are needed;

''(3) under the base closure process, authorized by title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below], 86 military bases are scheduled for closure; and

''(4) facilities rendered excess by the base closure process should be seriously considered for use as prisons and drug treatment facilities, as appropriate.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should, pursuant to the provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act, give priority to making real property (including the improvements thereon) of the Department of Defense rendered excess or surplus as a result of the recommendations of the Commission on Base Realignment and Closure available to another Federal agency or a State or local government for use as a penal or correctional facility or as a drug abuse prevention, treatment, or rehabilitation center.''

NOTICE TO LOCAL AND STATE EDUCATIONAL AGENCIES OF ENROLLMENT CHANGES DUE TO BASE CLOSURES AND REALIGNMENTS

Pub. L. 101–189, div. B, title XXVIII, § 2833, Nov. 29, 1989, 103 Stat. 1661, provided that:

''(a) IDENTIFICATION OF ENROLLMENT CHANGES.—(1) Not later than January 1 of each year in which any activities necessary to close or realign a military installation under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below] are conducted, the Secretary of Defense shall identify, to the extent practicable, each local educational agency that will experience at least a 5-percent increase or at least a 10-percent reduction in the number of dependent children of members of the Armed Forces and of civilian employees of the Department of Defense enrolled in schools under the jurisdiction of such agency during the next academic year (compared with the number of such children enrolled in such schools during the preceding year) as a result of the closure or realignment of a military installation under that Act [Pub. L. 100–526, see Short Title of 1988 Amendment note above].

''(2) The Secretary shall carry out this subsection in consultation with the Secretary of Education.

''(b) NOTICE REQUIRED.—Not later than 30 days after the date on which the Secretary of Defense identifies a local educational agency under subsection (a), the Secretary shall transmit a written notice of the schedule for the closure or realignment of the military installation affecting that local educational agency to that local educational agency and to the State government education agency responsible for administering State government education programs involving that local educational agency.''

CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 100–526, title II, Oct. 24, 1988, 102 Stat. 2627, as amended by Pub. L. 101–510, div. B, title XXIX, § 2923(b)(1), Nov. 5, 1990, 104 Stat. 1821; Pub. L. 102–190, div. A, title III, § 344(a), Dec. 5, 1991, 105 Stat. 1344; Pub. L. 102–484, div. B, title XXVIII, § 2821(a), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 103–160, div. B, title XXIX, §§ 2902(a), 2903(a), 2904(a), 2905(a), 2907(a), 2908(a), 2918(b), 2921(a), Nov. 30, 1993, 107 Stat. 1909, 1912, 1915, 1916, 1921, 1922, 1928, 1929; Pub. L. 103–337, div. A, title X, § 1070(b)(13), div. B, title XXVIII, §§ 2812(a), 2813(a)–(c)(1), (d)(1), (e)(1), Oct. 5, 1994, 108 Stat. 2857, 3054, 3055; Pub. L. 103–421, § 2(f)(1), Oct. 25, 1994, 108 Stat. 4354, provided that:

''SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''The Secretary shall—

''(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Secretary pursuant to the charter establishing such Commission;

''(2) realign all military installations recommended for realignment by such Commission in such report; and

''(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

''SEC. 202. CONDITIONS

''(a) IN GENERAL.—The Secretary may not carry out any closure or realignment of a military installation under this title unless—

''(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

''(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

''(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

''(b) JOINT RESOLUTION.—The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

''(c) TERMINATION OF AUTHORITY.—(1) Except as provided in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

''(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''SEC. 203. THE COMMISSION

''(a) MEMBERSHIP.—The Commission shall consist of 12 members appointed by the Secretary of Defense.

''(b) DUTIES.—The Commission shall—

''(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and

shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

''(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives—

''(A) a copy of such report; and

''(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

''(c) STAFF.—Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

''SEC. 204. IMPLEMENTATION

''(a) IN GENERAL.—In closing or realigning a military installation under this title, the Secretary—

''(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

''(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide—

''(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

''(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment,

if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

''(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title—

''(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

''(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

''(C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations in effect on the date of the enactment of this title [Oct. 24, 1988] governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works]; and

''(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

''(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

''(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(E) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

''(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date referred to in subparagraph (A); or

''(IV) ninety days before the date of the closure of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the

installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this title to the redevelopment authority with respect to the installation.

''(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

''(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

''(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this title will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

''(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

''(C)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer personal property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

''(D) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(E) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraph (B), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, includ-

ing with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) Except as provided in subparagraph (B) or (C), all proceeds—

''(i) from any transfer under paragraphs (3) through (6); and

''(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account established by section 207(a)(1).

''(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

''(C)(i) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

''(I) commissary stores; and

''(II) real property and facilities for nonappropriated fund instrumentalities.

''(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(iii) As used in this subparagraph:

''(I) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(II) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(III) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(8)(A) Subject to subparagraph (C), the Secretary may contract with local governments for the provision of police services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title if the Secretary determines that the provision of such services under such contracts is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that pro-

fessionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF OTHER LAW.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to—

''(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

''(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

''(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider—

''(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

''(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

''(iii) alternative military installations to those selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

''(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''SEC. 205. WAIVER

''The Secretary may carry out this title without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

''(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

''SEC. 206. REPORTS

''(a) IN GENERAL.—As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress—

''(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''(b) STUDY.—(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

''(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

''(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

''SEC. 207. FUNDING

''(a) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account' which shall be administered by the Secretary as a single account.

''(2) There shall be deposited into the Account—

''(A) funds authorized for and appropriated to the Account with respect to fiscal year 1990 and fiscal years beginning thereafter;

''(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the appropriate committees of Congress; and

''(C) proceeds described in section 204(b)(4)(A).

''(3)(A) The Secretary may use the funds in the Account only for the purposes described in section 204(a).

''(B) When a decision is made to use funds in the Account to carry out a construction project under section 204(a)(1) and the cost of the project will exceed the maximum amount authorized by law for a minor construction project, the Secretary shall notify in writing the appropriate committees of Congress of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

''(4) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this title, the Secretary shall transmit a report to the appropriate committees of Congress of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 204(a) during such fiscal year.

''(5)(A) Except as provided in subparagraph (B), unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this title shall be held in the Account until transferred by law after the appropriate committees of Congress receive the report transmitted under paragraph (6).

''(B) The Secretary may, after the termination of authority referred to in subparagraph (A), use any unobligated funds referred to in that subparagraph that are not transferred in accordance with that subparagraph to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''(6) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this title, the Secretary shall transmit to the appropriate committees of Congress a report containing an accounting of—

''(A) all the funds deposited into and expended from the Account or otherwise expended under this title; and

''(B) any amount remaining in the Account.

''(7) Proceeds received after September 30, 1995, from the transfer or disposal of any property at a military installation closed or realigned under this title shall be deposited directly into the Department of Defense Base Closure Account 1990 established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(b) BASE CLOSURE ACCOUNT TO BE EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—No funds appropriated to the Department of Defense may be used for purposes described in section 204(a)(3) except funds that have been authorized for and appropriated to the Account. The prohibition in the preceding sentence expires upon the termination of the authority of the Secretary to carry out a closure or realignment under this title.

''SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 202(b), the term 'joint resolution' means only a joint resolution which is introduced before March 15, 1989, and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ', the blank space being appropriately filled in; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.'.

''(b) REFERRAL.—A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''SEC. 209. DEFINITIONS

''In this title:

''(1) The term 'Account' means the Department of Defense Base Closure Account established by section 207(a)(1).

''(2) The term 'appropriate committees of Congress' means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives [Committee on Armed Services of the House of Representatives now Committee on National Security].

''(3) The terms 'Commission on Base Realignment and Closure' and 'Commission' mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered thereafter with respect to the membership and voting.

''(4) The term 'charter establishing such Commission' means the charter referred to in paragraph (3).

''(5) The term 'initiate' includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

''(6) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Secretary of a military department.

''(7) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(10) The term 'redevelopment authority', in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(11) The term 'redevelopment plan' in the case of an installation to be closed under this title, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.''

[For effective date of amendment by section 2813(d)(1) of Pub. L. 103–337 to section 209 of Pub. L. 100–526, set out above, see Effective Date of Amendment by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[For effective date of amendment by section 344(a) of Pub. L. 102–190 to sections 204 and 209 of Pub. L. 100–526, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Section 2923(b)(2) of Pub. L. 101–510 provided that: ''The amendment made by paragraph (1) [amending section 207 of Pub. L. 100–526 set out above] does not apply with respect to the availability of funds appropriated before the date of the enactment of this Act [Nov. 5, 1990].'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2667, 2706 of this title; title 2 section 907c; title 5 section 6304; title 29 section 1662d–1; title 40 sections 484, 485; title 42 section 9620.

[§ 2688. Repealed. Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

Section, added Pub. L. 96–125, title VIII, § 804(a)(1), Nov. 26, 1979, 93 Stat. 948; amended Pub. L. 96–418, title VIII, § 804, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 97–22, § 11(a)(9), July 10, 1981, 95 Stat. 138; Pub. L. 97–99, title IX, § 901, Dec. 23, 1981, 95 Stat. 1381, related to use of solar energy systems in new facilities. See section 2857 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2689. Development of geothermal energy on military lands

The Secretary of a military department may develop, or authorize the development of, any geothermal energy resource within lands under the Secretary's jurisdiction, including public lands, for the use or benefit of the Department of Defense if that development is in the public interest, as determined by the Secretary concerned, and will not deter commercial development and use of other portions of such resource if offered for leasing.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 172.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2394 of this title.

§ 2690. Fuel sources for heating systems; prohibition on converting certain heating facilities

(a)(1) The Secretary of the military department concerned shall provide that the primary fuel source to be used in any new heating system constructed on lands under the jurisdiction of the military department is the most cost effective fuel for that heating system over the life cycle of the system.

(2) The Secretary of Defense shall prescribe regulations for the determination of the life-cycle cost effectiveness of a fuel for the purposes of paragraph (1).

(b) The Secretary of a military department may not convert a heating facility at a United States military installation in Europe from a coal-fired facility to an oil-fired facility, or to any other energy source facility, unless the Secretary—

(1) determines that the conversion (A) is required by the government of the country in which the facility is located, or (B) is cost effective over the life cycle of the facility; and

(2) submits to Congress notification of the proposed conversion and a period of 30 days has elapsed following the date on which Congress receives the notice.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 173; amended Pub. L. 99–661, div. A, title XII, § 1205(a)(1), Nov. 14, 1986, 100 Stat. 3971.)

AMENDMENTS

1986—Pub. L. 99–661 substituted ''Fuel sources for heating systems; prohibition on converting certain heating facilities'' for ''Restriction on fuel sources for new heating systems'' in section catchline and amended text generally. Prior to amendment, section read as follows:

''(a) Except as provided in subsection (b), a new heating system that requires a heat input rate of fifty million British thermal units per hour or more and that uses oil or gas (or a derivative of oil or gas) as fuel may not be constructed on lands under the jurisdiction of a military department.

''(b) The Secretary of the military department concerned may waive the provisions of subsection (a) in rare and unusual cases, but such a waiver may not become effective until after the Secretary has notified the appropriate committees of Congress in writing of the waiver.

''(c) The Secretary of the military department concerned may not provide service for a new heating system in increments in order to avoid the prohibition contained in subsection (a).''

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2691. Restoration of land used by permit or lease from other agencies

(a) The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit or lease from another military department or Federal agency if the restoration is required by the permit or lease making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) Unless otherwise prohibited by law or the terms of the permit or lease, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(Added Pub. L. 98–407, title VIII, § 804(a), Aug. 28, 1984, 98 Stat. 1519; amended Pub. L. 99–145, title XIII, § 1303(a)(17), Nov. 8, 1985, 99 Stat. 739.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the act related to management and disposal of Government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''used by'' for ''used of'' in section catchline.

§ 2692. Storage and disposal of nondefense toxic and hazardous materials

(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage or disposal of any material that is a toxic or hazardous material and that is not owned by the Department of Defense.

(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section, including specification of the quantity of a material that serves to make it hazardous or toxic for the purposes of this section. The definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

(b) Subsection (a) does not apply to—

(1) the storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services;

(2) the temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance

with an agreement between the Secretary of Defense and the head of the Federal agency concerned;

(3) the temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

(4) the disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

(5) the temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy;

(6) the storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations;

(7) the temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency;

(8) the storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated by a private person in connection with the authorized and compatible use by that person of an industrial-type facility of the Department of Defense; and

(9) the treatment and disposal of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type facility of that military department and the Secretary enters into a contract with that person that—

(A) is consistent with the best interest of national defense and environmental security; and

(B) provides for that person's continued financial and environmental responsibility and liability with regard to the material.

(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.

(Added Pub. L. 98–407, title VIII, § 805(a), Aug. 28, 1984, 98 Stat. 1520; amended Pub. L. 102–484, div. B, title XXVIII, § 2852, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–337, div. A, title III, § 325, Oct. 5, 1994, 108 Stat. 2711.)

AMENDMENTS

1994—Subsec. (b)(9). Pub. L. 103–337 added par. (9).
1992—Subsec. (b)(8). Pub. L. 102–484 added par. (8).

§ 2693. Conveyance of certain property

(a) Except as provided in subsection (b), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary shall—

(1) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(2) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

(3) if the Attorney General certifies that a determination has been made by the Director of the Bureau of Justice Assistance within the Department of Justice to utilize the real property or facility under the correctional options program carried out under section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, convey the real property or facility, without reimbursement, to the public agencies referred to in section 515(a)(1) or 515(a)(3) of title I of such Act for such utilization.

(b) The provisions of this section shall not apply—

(1) to real property and facilities to which title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) is applicable; and

(2) during any portion of a fiscal year after four conveyances have been made under this section in such fiscal year.

(Added Pub. L. 101–647, title XVIII, § 1802(a), Nov. 29, 1990, 104 Stat. 4849.)

REFERENCES IN TEXT

Section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (a)(3), is classified to section 3762a of Title 42, The Public Health and Welfare.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(1), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of this title and Tables.

PRIOR PROVISIONS

A prior section 2693 was renumbered section 2465 of this title.

CHAPTER 160—ENVIRONMENTAL RESTORATION

Sec.
2701. Environmental restoration program.
2702. Research, development, and demonstration program.

Sec.
2703. Environmental restoration transfer account.
2704. Commonly found unregulated hazardous substances.
2705. Notice of environmental restoration activities.
2706. Annual reports to Congress.
2707. Definitions.
2708. Contracts for handling hazardous waste from defense facilities.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title III, §331(a)(2), Dec. 5, 1991, 105 Stat. 1340, added item 2708.

Pub. L. 102–25, title VII, §701(e)(6), Apr. 6, 1991, 105 Stat. 114, substituted ''Annual reports to Congress'' for ''Annual report to Congress'' in item 2706.

1989—Pub. L. 101–189, div. A, title III, §357(a)(2)(B), Nov. 29, 1989, 103 Stat. 1427, which directed amendment of the item relating to section 2706 in the table of sections at the beginning of chapter 106 to read ''Annual reports to Congress'', could not be executed because item 2706 is in this chapter and not in chapter 106.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2810 of this title.

§2701. Environmental restoration program

(a) ENVIRONMENTAL RESTORATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the ''Defense Environmental Restoration Program''.

(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as ''CERCLA'') (42 U.S.C. 9601 et seq.).

(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

(b) PROGRAM GOALS.—Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

(C) Each vessel owned or operated by the Department of Defense.

(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

(d) SERVICES OF OTHER AGENCIES.—

(1) IN GENERAL.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency or any Indian tribe, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

(2) DEFINITION.—In this subsection, the term ''Indian tribe'' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).

(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

(f) USE OF APPROPRIATED FUNDS AT FORMER DOD SITES.—Appropriations available to the Department of Defense may be used at sites formerly used by the Department of Defense for removal of unsafe buildings or debris of the Department of Defense.

(g) REMOVAL OF UNSAFE BUILDINGS AND DEBRIS BEFORE RELEASE FROM FEDERAL CONTROL.—In the case of property formerly used by the Department of Defense which is to be released from Federal Government control and at which there are unsafe buildings or debris of the Department of Defense, all actions necessary to comply with regulations of the General Services Administra-

tion on the transfer of property in a safe condition shall be completed before the property is released from Federal Government control, except in the case of property to be conveyed to an entity of State or local government or to a native corporation.

(h) SURETY-CONTRACTOR RELATIONSHIP.—Any surety which provides a bid, performance, or payment bond in connection with any direct Federal procurement for a response action contract under the Defense Environmental Restoration Program and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any indemnification and the same standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

(i) SURETY BONDS.—

(1) APPLICABILITY OF MILLER ACT.—If under the Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the ''Miller Act'', surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e–270f), the surety bonds shall be issued in accordance with such Act of August 24, 1935.

(2) LIMITATION OF ACCRUAL OF RIGHTS OF ACTION UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than an obligee named in the bond.

(3) LIABILITY OF SURETIES UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, unless otherwise provided for by the Secretary in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications of the contract less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) NONPREEMPTION.—Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(j) APPLICABILITY.—(1) Subsections (h) and (i) shall not apply to bonds executed before December 5, 1991, or after December 31, 1999.

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(g)) applies.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIV, § 1481(i)(1), Nov. 5, 1990, 104 Stat. 1708; Pub. L. 102–190, div. A, title III, § 336(a), Dec. 5, 1991, 105 Stat. 1342; Pub. L. 102–484, div. A, title III, § 331(b), title X, § 1052(35), Oct. 23, 1992, 106 Stat. 2373, 2501; Pub. L. 103–35, title II, § 201(d)(6), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title III, §§ 322, 323, Oct. 5, 1994, 108 Stat. 2711.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsecs. (a)(2), (c)(1), (2), and (e), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. Sections 119, 120, and 122 of that Act are classified to sections 9619, 9620, and 9622, respectively, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

Act of August 24, 1935, referred to in subsec. (i)(1), is act Aug. 24, 1935, ch. 642, 49 Stat. 793, as amended, popularly known as the Miller Act, which is classified generally to sections 270a to 270d of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 270a of Title 40 and Tables.

Act of April 29, 1941, referred to in subsec. (i)(1), is act Apr. 29, 1941, ch. 81, 55 Stat. 147, as amended, which is classified generally to sections 270e and 270f of Title 40. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

Provisions similar to those comprising subsecs. (f) and (g) of this section were contained in Pub. L. 101–165, title IX, § 9038, Nov. 21, 1989, 103 Stat. 1137, which was set out below, prior to repeal by Pub. L. 101–510, § 1481(i)(2).

A prior section 2701 was renumbered section 2721 of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337, § 322, designated existing provisions as par. (1), inserted par. (1) heading, inserted ''or any Indian tribe'' after ''any State or local government agency'', and added par. (2).

Subsec. (j)(1). Pub. L. 103–337, § 323, substituted ''December 31, 1999'' for ''December 31, 1995''.

1993—Subsec. (j)(2). Pub. L. 103–35 substituted ''(42 U.S.C. 9619(g)) applies'' for ''applies (42 U.S.C. 9619(g))''.

1992—Subsec. (j). Pub. L. 102–484, § 1052(35), substituted ''December 5, 1991,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993'' in par. (1).

Pub. L. 102–484, § 331(b), substituted ''December 31, 1995'' for ''December 31, 1992'', designated existing provisions as par. (1), and added par. (2).

1991—Subsecs. (h) to (j). Pub. L. 102–190 added subsecs. (h) to (j).

1990—Subsecs. (f), (g). Pub. L. 101–510 added subsecs. (f) and (g).

ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM FOR DEFENSE PERSONNEL

Section 328 of Pub. L. 103–337 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish and conduct an education and training program for members of the Armed Forces and civilian

employees of the Department of Defense whose responsibilities include planning or executing the environmental mission of the Department. The Secretary shall conduct the program to ensure that such members and employees obtain and maintain the knowledge and skill required to comply with existing environmental laws and regulations.

''(b) IDENTIFICATION OF MILITARY FACILITIES WITH ENVIRONMENTAL TRAINING EXPERTISE.—As part of the program, the Secretary may identify military facilities that have existing expertise (or the capacity to develop such expertise) in conducting education and training activities in various environmental disciplines. In the case of a military facility identified under this subsection, the Secretary should encourage the use of the facility by members and employees referred to in subsection (a) who are not under the jurisdiction of the military department operating the facility.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE EDUCATION AND TRAINING IN ENVIRONMENTAL RESTORATION TO DISLOCATED DEFENSE WORKERS AND YOUNG ADULTS

Pub. L. 103–160, div. A, title XIII, §1333, Nov. 30, 1993, 107 Stat. 1798, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(11), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(a) GRANT PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a program to provide demonstration grants to institutions of higher education to assist such institutions in providing education and training in environmental restoration and hazardous waste management to eligible dislocated defense workers and young adults described in subsection (d). The Secretary shall award the grants pursuant to a merit-based selection process.

''(2) A grant provided under this subsection may cover a period of not more than three fiscal years, except that the payments under the grant for the second and third fiscal year shall be subject to the approval of the Secretary and to the availability of appropriations to carry out this section in that fiscal year.

''(b) APPLICATION.—To be eligible for a grant under subsection (a), an institution of higher education shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require. The application shall include the following:

''(1) An assurance by the institution of higher education that it will use the grant to supplement and not supplant non-Federal funds that would otherwise be available for the education and training activities funded by the grant.

''(2) A proposal by the institution of higher education to provide expertise, training, and education in hazardous materials and waste management and other environmental fields applicable to defense manufacturing sites and Department of Defense and Department of Energy defense facilities.

''(c) USE OF GRANT FUNDS.—(1) An institution of higher education receiving a grant under subsection (a) shall use the grant to establish a consortium consisting of the institution and one or more of each of the entities described in paragraph (2) for the purpose of establishing and conducting a program to provide education and training in environmental restoration and waste management to eligible individuals described in subsection (d). To the extent practicable, the Secretary shall authorize the consortium to use a military installation closed or selected to be closed under a base closure law in providing on-site basic skills training to participants in the program.

''(2) The entities referred to in paragraph (1) are the following:

''(A) Appropriate State and local agencies.

''(B) Private industry councils (as described in section 102 of the Job Training Partnership Act (29 U.S.C. 1512)).

''(C) Community-based organizations (as defined in section 4(5) of such Act (29 U.S.C. 1503(5)).

''(D) Businesses.

''(E) Organized labor.

''(F) Other appropriate educational institutions.

''(d) ELIGIBLE INDIVIDUALS.—A program established or conducted using funds provided under subsection (a) may provide education and training in environmental restoration and waste management to—

''(1) individuals who have been terminated or laid off from employment (or have received notice of termination or lay off) as a consequence of reductions in expenditures by the United States for defense, the cancellation, termination, or completion of a defense contract, or the closure or realignment of a military installation under a base closure law, as determined in accordance with regulations prescribed by the Secretary; or

''(2) individuals who have attained the age of 16 but not the age of 25.

''(e) ELEMENTS OF EDUCATION AND TRAINING PROGRAM.—In establishing or conducting an education and training program using funds provided under subsection (a), the institution of higher education shall meet the following requirements:

''(1) The institution of higher education shall establish and provide a work-based learning system consisting of education and training in environmental restoration—

''(A) which may include basic educational courses, on-site basic skills training, and mentor assistance to individuals described in subsection (d) who are participating in the program; and

''(B) which may lead to the awarding of a certificate or degree at the institution of higher education.

''(2) The institution of higher education shall undertake outreach and recruitment efforts to encourage participation by eligible individuals in the education and training program.

''(3) The institution of higher education shall select participants for the education and training program from among eligible individuals described in paragraph (1) or (2) of subsection (d).

''(4) To the extent practicable, in the selection of young adults described in subsection (d)(2) to participate in the education and training program, the institution of higher education shall give priority to those young adults who—

''(A) have not attended and are otherwise unlikely to be able to attend an institution of higher education; or

''(B) have, or are members of families who have, received a total family income that, in relation to family size, is not in excess of the higher of—

''(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))); or

''(ii) 70 percent of the lower living standard income level.

''(5) To the extent practicable, the institution of higher education shall select instructors for the education and training program from institutions of higher education, appropriate community programs, and industry and labor.

''(6) To the extent practicable, the institution of higher education shall consult with appropriate Federal, State, and local agencies carrying out environmental restoration programs for the purpose of achieving coordination between such programs and the education and training program conducted by the consortium.

''(f) SELECTION OF GRANT RECIPIENTS.—To the extent practicable, the Secretary shall provide grants to institutions of higher education under subsection (a) in a manner which will equitably distribute such grants among the various regions of the United States.

''(g) LIMITATION ON AMOUNT OF GRANT TO A SINGLE RECIPIENT.—The amount of a grant under subsection (a) that may be made to a single institution of higher edu-

cation in a fiscal year may not exceed ⅓ of the amount made available to provide grants under such subsection for that fiscal year.

''(h) REPORTING REQUIREMENTS.—(1) The Secretary may provide a grant to an institution of higher education under subsection (a) only if the institution agrees to submit to the Secretary, in each fiscal year in which the Secretary makes payments under the grant to the institution, a report containing—

''(A) a description and evaluation of the education and training program established by the consortium formed by the institution under subsection (c); and

''(B) such other information as the Secretary may reasonably require.

''(2) Not later than 18 months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall submit to the President and Congress an interim report containing—

''(A) a compilation of the information contained in the reports received by the Secretary from each institution of higher education under paragraph (1); and

''(B) an evaluation of the effectiveness of the demonstration grant program authorized by this section.

''(3) Not later than January 1, 1997, the Secretary shall submit to the President and Congress a final report containing—

''(A) a compilation of the information described in the interim report; and

''(B) a final evaluation of the effectiveness of the demonstration grant program authorized by this section, including a recommendation as to the feasibility of continuing the program.

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

''(1) BASE CLOSURE LAW.—The term 'base closure law' means the following:

''(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any other similar law enacted after the date of the enactment of this Act [Nov. 30, 1993].

''(2) ENVIRONMENTAL RESTORATION.—The term 'environmental restoration' means actions taken consistent with a permanent remedy to prevent or minimize the release of hazardous substances into the environment so that such substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

''(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

''(4) SECRETARY.—The term 'Secretary' means the Secretary of Defense.

''(j) CONFORMING REPEAL.—Section 4452 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 2701 note) is repealed.''

ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM

Pub. L. 103–160, div. A, title XIII, § 1334, Nov. 30, 1993, 107 Stat. 1801, provided that:

''(a) AUTHORITY.—The Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, may establish a scholarship program in order to enable eligible individuals described in subsection (d) to undertake the educational training or activities relating to environmental engineering, environmental sciences, or environmental project management in fields related to hazardous waste management and cleanup described in subsection (b) at the institutions of higher education described in subsection (c).

''(b) EDUCATIONAL TRAINING OR ACTIVITIES.—(1) The program established under subsection (a) shall be limited to educational training or activities related to—

''(A) site remediation;

''(B) site characterization;

''(C) hazardous waste management;

''(D) hazardous waste reduction;

''(E) recycling;

''(F) process and materials engineering;

''(G) training for positions related to environmental engineering, environmental sciences, or environmental project management (including training for management positions); and

''(H) environmental engineering with respect to the construction of facilities to address the items described in subparagraphs (A) through (G).

''(2) The program established under subsection (a) shall be limited to educational training or activities designed to enable individuals to achieve specialization in the following fields:

''(A) Earth sciences.

''(B) Chemistry.

''(C) Chemical Engineering.

''(D) Environmental engineering.

''(E) Statistics.

''(F) Toxicology.

''(G) Industrial hygiene.

''(H) Health physics.

''(I) Environmental project management.

''(c) ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION.—Scholarship funds awarded under this section shall be used by individuals awarded scholarships to enable such individuals to attend institutions of higher education associated with hazardous substance research centers to enable such individuals to undertake a program of educational training or activities described in subsection (b) that leads to an undergraduate degree, a graduate degree, or a degree or certificate that is supplemental to an academic degree.

''(d) ELIGIBLE INDIVIDUALS.—Individuals eligible for scholarships under the program established under subsection (a) are the following:

''(1) Any member of the Armed Forces who—

''(A) was on active duty or full-time National Guard duty on September 30, 1990;

''(B) during the 5-year period beginning on that date—

''(i) is involuntarily separated (as defined in section 1141 of title 10, United States Code) from active duty or full-time National Guard duty; or

''(ii) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10, United States Code, or the voluntary separation incentive program under section 1175 of that title; and

''(C) is not entitled to retired or retainer pay incident to that separation.

''(2) Any civilian employee of the Department of Energy or the Department of Defense (other than an employee referred to in paragraph (3)) who—

''(A) is terminated or laid off from such employment during the five-year period beginning on September 30, 1990, as a result of reductions in defense-related spending (as determined by the appropriate Secretary); and

''(B) is not entitled to retired or retainer pay incident to that termination or lay off.

''(3) Any civilian employee of the Department of Defense whose employment at a military installation approved for closure or realignment under a base closure law is terminated as a result of such closure or realignment.

''(e) AWARD OF SCHOLARSHIP.—(1)(A) The Secretary of Defense shall award scholarships under this section to such eligible individuals as the Secretary determines appropriate pursuant to regulations or policies promulgated by the Secretary.

''(B) In awarding a scholarship under this section, the Secretary shall—

''(i) take into consideration the extent to which the qualifications and experience of the individual applying for the scholarship prepared such individual for the educational training or activities to be undertaken; and

''(ii) award a scholarship only to an eligible individual who has been accepted for enrollment in the institution of higher education described in subsection (c) and providing the educational training or activities for which the scholarship assistance is sought.

''(2) The Secretary of Defense shall determine the amount of the scholarships awarded under this section, except that the amount of scholarship assistance awarded to any individual under this section may not exceed—

''(A) $10,000 in any 12-month period; and

''(B) a total of $20,000.

''(f) APPLICATION; PERIOD FOR SUBMISSION.—(1) Each individual desiring a scholarship under this section shall submit an application to the Secretary of Defense in such manner and containing or accompanied by such information as the Secretary may reasonably require.

''(2) A member of the Armed Forces described in subsection (d)(1) who desires to apply for a scholarship under this section shall submit an application under this subsection not later than 180 days after the date of the separation of the member. In the case of members described in subsection (d)(1) who were separated before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these members submitted during the 180-day period beginning on the date of the enactment of this Act.

''(3) A civilian employee described in paragraph (2) or (3) of subsection (d) who desires to apply for a scholarship under this section, but who receives no prior notice of such termination or lay off, may submit an application under this subsection at any time after such termination or lay off. A civilian employee described in paragraph (1) or (2) of subsection (d) who receives a notice of termination or lay off shall submit an application not later than 180 days before the effective date of the termination or lay off. In the case of employees described in such paragraphs who were terminated or laid off before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these employees submitted during the 180-day period beginning on the date of the enactment of this Act.

''(g) REPAYMENT.—(1) Any individual receiving scholarship assistance from the Secretary of Defense under this section shall enter into an agreement with the Secretary under which the individual agrees to pay to the United States the total amount of the scholarship assistance provided to the individual by the Secretary under this section, plus interest at the rate prescribed in paragraph (4), if the individual does not complete the educational training or activities for which such assistance is provided.

''(2) If an individual fails to pay to the United States the total amount required pursuant to paragraph (1), including the interest, at the rate prescribed in paragraph (4), the unpaid amount shall be recoverable by the United States from the individual or such individual's estate by—

''(A) in the case of an individual who is an employee of the United States, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method as is provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary of Defense may waive in whole or in part a required repayment under this subsection if the Secretary determines that the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of scholarship assistance provided to an individual under this section, for purposes of repayment under this subsection, shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(h) COORDINATION OF BENEFITS.—Any scholarship assistance provided to an individual under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]).

''(i) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit to the Congress a report describing the activities undertaken under the program authorized by subsection (a) and containing recommendations for future activities under the program.

''(j) FUNDING.—(1) To carry out the scholarship program authorized by subsection (a), the Secretary of Defense may use the unobligated balance of funds made available pursuant to section 4451(k) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2701 note) for fiscal year 1993 for environmental scholarship and fellowship programs for the Department of Defense.

''(2) The cost of carrying out the program authorized by subsection (a) may not exceed $8,000,000 in any fiscal year.

''(k) DEFINITIONS.—For purposes of this section:

''(1) The term 'base closure law' means the following:

''(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'hazardous substance research centers' means the hazardous substance research centers described in section 311(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(d)). Such term includes the Great Plains and Rocky Mountain Hazardous Substance Research Center, the Northeast Hazardous Substance Research Center, the Great Lakes and Mid-Atlantic Hazardous Substance Research Center, the South and Southwest Hazardous Substance Research Center, and the Western Region Hazardous Substance Research Center.

''(3) The term 'institution of higher education' has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).''

TRAINING AND EMPLOYMENT OF DEPARTMENT OF DEFENSE EMPLOYEES TO CARRY OUT ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 103–160, div. A, title XIII, §1335, Nov. 30, 1993, 107 Stat. 1804, provided that:

''(a) TRAINING PROGRAM.—The Secretary of Defense may establish a program to provide such training to eligible civilian employees of the Department of Defense as the Secretary considers to be necessary to qualify such employees to carry out environmental assessment, remediation, and restoration activities (including asbestos abatement) at military installations closed or to be closed.

''(b) EMPLOYMENT OF GRADUATES.—In the case of eligible civilian employees of the Department of Defense who successfully complete the training program established pursuant to subsection (a), the Secretary may—

''(1) employ such employees to carry out environmental assessment, remediation, and restoration activities at military installations referred to in subsection (a); or

''(2) require, as a condition of a contract for the private performance of such activities at such an installation, the contractor to be engaged in carrying out such activities to employ such employees.

''(c) ELIGIBLE EMPLOYEES.—Eligibility for selection to participate in the training program under subsection (a) shall be limited to those civilian employees of the Department of Defense whose employment would be terminated by reason of the closure of a military installation if not for the selection of the employees to participate in the training program.

''(d) PRIORITY IN TRAINING AND EMPLOYMENT.—The Secretary shall give priority in providing training and employment under this section to eligible civilian employees employed at a military installation the closure of which will directly result in the termination of the employment of at least 1,000 civilian employees of the Department of Defense.

''(e) EFFECT ON OTHER ENVIRONMENTAL REQUIREMENTS.—Nothing in this section shall be construed to revise or modify any requirement established under Federal or State law relating to environmental assessment, remediation, or restoration activities at military installations closed or to be closed.''

COOPERATIVE AGREEMENTS AND GRANTS TO IMPLEMENT LEGACY RESOURCE MANAGEMENT PROGRAM

Pub. L. 103–139, title II, Nov. 11, 1993, 107 Stat. 1422, provided in part: ''That notwithstanding the provisions of the Federal Cooperative Grant and Agreement Act of 1977 (31 U.S.C. 6303–6308), the Department of Defense may hereafter negotiate and enter into cooperative agreements and grants with public and private agencies, organizations, institutions, individuals or other entities to implement the purposes of the Legacy Resource Management Program''.

PILOT PROGRAM FOR EXPEDITED ENVIRONMENTAL RESPONSE ACTIONS

Section 323 of Pub. L. 102–484 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a pilot program to expedite the performance of on-site environmental restoration at—

''(1) military installations scheduled for closure under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

''(2) military installations scheduled for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

''(3) facilities for which the Secretary is responsible under the Defense Environmental Restoration Program established under section 2701 of title 10, United States Code.

''(b) SELECTION OF INSTALLATIONS AND FACILITIES.—(1) For participation in the pilot program, the Secretary shall select—

''(A) 2 military installations referred to in subsection (a)(1);

''(B) 4 military installations referred to in subsection (a)(2), consisting of—

''(i) 2 military installations scheduled for closure as of the date of the enactment of this Act [Oct. 23, 1992]; and

''(ii) 2 military installations included in the list transmitted by the Secretary no later than April 15, 1993, pursuant to section 2903(c)(1) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510] (10 U.S.C. 2687 note) and recommended in a report transmitted by the President in that year pursuant to section 2903(e) of such Act and for which a joint resolution disapproving such recommendations is not enacted by the deadline set forth in section 2904(b) of such Act [10 U.S.C. 2687 note]; and

''(C) not less than 4 facilities referred to in subsection (a)(3) with respect to each military department.

''(2)(A) Except as provided in subparagraph (B), the selections under paragraph (1) shall be made not later than 60 days after the date of the enactment of this Act.

''(B) The selections under paragraph (1) of military installations described in subparagraph (B)(ii) of such paragraph shall be made not later than 60 days after the date on which the deadline (set forth in section 2904(b) of such Act) for enacting a joint resolution of disapproval with respect to the report transmitted by the President has passed.

''(3) The installations and facilities selected under paragraph (1) shall be representative of—

''(A) a variety of the environmental restoration activities required for facilities under the Defense Environmental Restoration Program and for military installations scheduled for closure under the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) [see Short Title of 1988 Amendment note under 10 U.S.C. 2687] and the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

''(B) the different sizes of such environmental restoration activities to provide, to the maximum extent practicable, opportunities for the full range of business sizes to enter into environmental restoration contracts with the Department of Defense and with prime contractors to perform activities under the pilot program.

''(c) EXECUTION OF PROGRAM.—Subject to subsection (d), and to the maximum extent possible, the Secretary shall, in order to eliminate redundant tasks and to accelerate environmental restoration at military installations, use the authorities granted in existing law to carry out the pilot program, including—

''(1) the development and use of innovative contracting techniques;

''(2) the use of all reasonable and appropriate methods to expedite necessary Federal and State administrative decisions, agreements, and concurrences; and

''(3) the use (including any necessary request for the use) of existing authorities to ensure that environmental restoration activities under the pilot program are conducted expeditiously, with particular emphasis on activities that may be conducted in advance of any final plan for environmental restoration.

''(d) PROGRAM PRINCIPLES.—The Secretary shall carry out the pilot program consistent with the following principles:

''(1) Activities of the pilot program shall be carried out subject to and in accordance with all applicable Federal and State laws and regulations.

''(2) Competitive procedures shall be used to select the contractors.

''(3) The experience and ability of the contractors shall be considered, in addition to cost, as a factor to be evaluated in the selection of the contractors.

''(e) PROGRAM RESTRICTIONS.—The pilot program established in this section shall not result in the delay of environmental restoration activities at other military installations and former sites of the Department of Defense.''

OVERSEAS ENVIRONMENTAL RESTORATION

Section 324 of Pub. L. 102–484 provided that:

''(a) SENSE OF CONGRESS.—It is the sense of the Congress that in carrying out environmental restoration activities at military installations outside the United States, the President should seek to obtain an equitable division of the costs of environmental restoration with the nation in which the installation is located.

''(b) REPORT.—The Secretary of Defense shall include in each Report on Allied Contributions to the Common Defense prepared under section 1003 of Public Law 98–525 (22 U.S.C. 1928 [note]) information, in classified and unclassified form, describing the efforts undertaken and the progress made by the President in carrying out subsection (a) during the period covered by the report.''

ENVIRONMENTAL SCHOLARSHIP AND FELLOWSHIP PROGRAMS FOR DEPARTMENT OF DEFENSE

Section 4451 of Pub. L. 102–484 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may conduct scholarship and fellowship programs for the purpose of enabling individuals to qualify for employment in the field of environmental restoration or other environmental programs in the Department of Defense.

''(b) ELIGIBILITY.—To be eligible to participate in the scholarship or fellowship program, an individual must—

''(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

''(2) be pursuing a program of education that leads to an appropriate higher education degree in engineering, biology, chemistry, or another qualifying field related to environmental activities, as determined by the Secretary;

''(3) sign an agreement described in subsection (c);

''(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

''(5) meet any other requirements prescribed by the Secretary.

''(c) AGREEMENT.—An agreement between the Secretary and an individual participating in a scholarship or fellowship established in subsection (a) shall be in writing, shall be signed by the individual, and shall include the following provisions:

''(1) The agreement of the Secretary to provide the individual with educational assistance for a specified number of school years (not to exceed 5 years) during which the individual is pursuing a course of education in a qualifying field. The assistance may include payment of tuition, fees, books, laboratory expenses, and (in the case of a fellowship) a stipend.

''(2) The agreement of the individual to perform the following:

''(A) Accept such educational assistance.

''(B) Maintain enrollment and attendance in the educational program until completed.

''(C) Maintain, while enrolled in the educational program, satisfactory academic progress as prescribed by the institution of higher education in which the individual is enrolled.

''(D) Serve, upon completion of the educational program and selection by the Secretary under subsection (e), as a full-time employee in an environmental restoration or other environmental position in the Department of Defense for the applicable period of service specified in subsection (d).

''(d) PERIOD OF SERVICE.—The period of service required under subsection (c)(2)(D) is as follows:

''(1) For an individual who completes a bachelor's degree under a scholarship program established under subsection (a), a period of 12 months for each school year or part thereof for which the individual is provided a scholarship under the program.

''(2) For an individual who completes a master's degree or other post-graduate degree under a fellowship program established under subsection (a), a period of 24 months for each school year or part thereof for which the individual is provided a fellowship under the program.

''(e) SELECTION FOR SERVICE.—The Secretary shall annually review the number and performance under the agreement of individuals who complete educational programs during the preceding year under any scholarship and fellowship programs conducted pursuant to subsection (a). From among such individuals, the Secretary shall select individuals for environmental positions in the Department of Defense, based on the type and availability of such positions.

''(f) REPAYMENT.—(1) Any individual participating in a scholarship or fellowship program under this section shall agree to pay to the United States the total amount of educational assistance provided to the individual under the program, plus interest at the rate prescribed in paragraph (4), if—

''(A) the individual does not complete the educational program as agreed to pursuant to subsection (c)(2)(B), or is selected by the Secretary under subsection (e) but declines to serve, or fails to complete the service, in a position in the Department of Defense as agreed to pursuant to subsection (c)(2)(D); or

''(B) the individual is involuntarily separated for cause from the Department of Defense before the end of the period for which the individual has agreed to continue in the service of the Department of Defense.

''(2) If an individual fails to fulfill the agreement of the individual to pay to the United States the total amount of educational assistance provided under a program established under subsection (a), plus interest at the rate prescribed in paragraph (4), a sum equal to the amount of the educational assistance (plus such interest, if applicable) shall be recoverable by the United States from the individual or his estate by—

''(A) in the case of an individual who is an employee of the Department of Defense or other Federal agency, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of educational assistance provided to an individual under a program established under subsection (a) shall, for purposes of repayment under this section, bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(g) PREFERENCE.—In evaluating applicants for the award of a scholarship or fellowship under a program established under subsection (a), the Secretary shall give a preference to—

''(1) individuals who are, or have been, employed by the Department of Defense or its contractors and subcontractors who have been engaged in defense-related activities; and

''(2) individuals who are or have been members of the Armed Forces.

''(h) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(i) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—The Secretary may award to qualified applicants not more than 100 scholarships (for undergraduate students) and not more than 30 fellowships (for graduate students) in fiscal year 1993.

''(j) REPORT TO CONGRESS.—Not later than January 1, 1994, the Secretary shall submit to the Congress a report on activities undertaken under the programs established under subsection (a) and recommendations for future activities under the programs.

''(k) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301(5) [106 Stat. 2360]—

''(1) $7,000,000 shall be available to carry out the scholarship and fellowship programs established in subsection (a); and

''(2) $3,000,000 shall be available to provide training to Department of Defense personnel to obtain the skills required to comply with existing environmental statutory and regulatory requirements.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE TRAINING IN ENVIRONMENTAL RESTORATION AND HAZARDOUS WASTE MANAGEMENT

Section 4452 of Pub. L. 102–484, which authorized the Secretary of Defense to establish a program to assist institutions of higher education, as defined in section 1141(a) of Title 20, Education, to provide education and training in environmental restoration and hazardous waste management and to award grants to such institutions, was repealed by Pub. L. 103–160, div. A, title XIII, §1333(j), Nov. 30, 1993, 107 Stat. 1800. See section 1333 of Pub. L. 103–160, set out above.

POLICIES AND REPORT ON OVERSEAS ENVIRONMENTAL COMPLIANCE

Section 342(b) of Pub. L. 101–510 provided that:

''(1) The Secretary of Defense shall develop a policy for determining applicable environmental requirements for military installations located outside the United States. In developing the policy, the Secretary shall ensure that the policy gives consideration to adequately protecting the health and safety of military and civilian personnel assigned to such installations.

''(2) The Secretary of Defense shall develop a policy for determining the responsibilities of the Department of Defense with respect to cleaning up environmental contamination that may be present at military installations located outside the United States. In developing the policy, the Secretary shall take into account applicable international agreements (such as Status of Forces agreements), multinational or joint use and operation of such installations, relative share of the collective defense burden, and negotiated accommodations.

''(3) The Secretary of Defense shall develop a policy and strategy to ensure adequate oversight of compliance with applicable environmental requirements and responsibilities of the Department of Defense determined under the policies developed under paragraphs (1) and (2). In developing the policy, the Secretary shall consider using the Inspector General of the Department of Defense to ensure active and forceful oversight.

''(4) At the same time the President submits to Congress his budget for fiscal year 1993 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a report describing the policies developed under paragraphs (1), (2), and (3). The report also shall include a discussion of the role of the Inspector General of the Department of Defense in overseeing environmental compliance at military installations outside the United States.

''(5) For purposes of this subsection, the term 'military installation' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located outside the United States and outside any territory, commonwealth, or possession of the United States.''

ENVIRONMENTAL EDUCATION PROGRAM FOR DEPARTMENT OF DEFENSE PERSONNEL

Section 344 of Pub. L. 101–510 directed Secretary of Defense to establish a program for the purpose of educating Department of Defense personnel in environmental management and, not later than date on which President submits budget for FY 1992 to Congress pursuant to 31 U.S.C. 1105(a), to submit to Congress recommendations regarding whether program should be continued after Sept. 30, 1991.

USE OF OZONE DEPLETING SUBSTANCES WITHIN DEPARTMENT OF DEFENSE

Section 325 of Pub. L. 102–484 provided that:

''(a) EVALUATION OF USE OF CLASS I SUBSTANCES.—The Director of the Defense Logistics Agency shall evaluate the use of class I substances by the military departments and Defense Agencies. In carrying out the evaluation, the Director shall—

''(1) determine the quantity of each class I substance that—

''(A) is held in the inventory of each military department and Defense Agency on December 31, 1992;

''(B) will be used by each military department and Defense Agency during 1992; and

''(C) will be used by each military department and Defense Agency in each of 1993, 1994, and 1995;

''(2) determine the quantity of each class I substance in the inventory of the military departments and Defense Agencies in each of 1993, 1994, and 1995 that can be reclaimed or recycled and reused by the military departments and Defense Agencies;

''(3) determine the type and quantity of class I substances whose use will be critical to the missions of the military departments and Defense Agencies after 1995;

''(4) determine the type and quantity of class I substances that must be stockpiled after 1995 in order to ensure the availability of such substances, including the availability of used, reclaimed, or recycled class I substances for the missions referred to in paragraph (3);

''(5) review the plans, if any, to reclaim, recycle, reuse, and maintain the stockpile referred to in paragraph (4); and

''(6) identify each specific site, facility, or vessel in connection with which the Secretary of Defense will seek an exemption pursuant to section 604(f) of the Clean Air Act (42 U.S.C. 7671c(f)) to permit the continued production or use of class I substances, and the type and quantity of each class I substance that will be produced or used in connection with the site, facility, or vessel.

''(b) EVALUATION OF USE OF CLASS II SUBSTANCES.—The Director of the Defense Logistics Agency shall evaluate the use of class II substances by the military departments and Defense Agencies. In carrying out the evaluation, the Director shall—

''(1) determine the quantity of each class II substance that—

''(A) is held in the inventory of each military department and Defense Agency on December 31, 1992;

''(B) will be used by each military department and Defense Agency during 1992; and

''(C) will be used by each military department and Defense Agency in each of 1993, 1994, and 1995; and

''(2) determine the quantity of each class II substance in the inventory of the military departments and Defense Agencies in each of 1993, 1994, and 1995 that can be reclaimed or recycled and reused by the military departments and Defense Agencies.

''(c) REPORT.—(1) The Director of the Defense Logistics Agency shall submit to the congressional defense committees a report on the status of the evaluation required under subsection (a) not later than April 1, 1993.

''(2) The Director of the Defense Logistics Agency shall submit to the congressional defense committees a report on the status of the evaluation required under subsection (b) not later than October 1, 1993.

''(d) DEFINITIONS.—In this section:

''(1) The term 'class I substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'class II substance' means any substance listed under section 602(b) of the Clean Air Act (42 U.S.C. 7671a(b)).''

Section 345 of Pub. L. 101–510 provided that:

''(a) DOD REQUIREMENTS FOR OZONE DEPLETING CHEMICALS OTHER THAN CFCs.—(1) In addition to the functions of the advisory committee established pursuant to section 356(c) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189] (10 U.S.C. 2701 note), it shall be the function of the Committee to study (A) the use of methyl chloroform, hydrochlorofluorcarbons (HCFCs), and carbon tetrachloride by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the costs and feasibility of using alternative compounds or technologies for methyl chloroform, HCFCs, and carbon tetrachloride.

''(2) Within 120 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of methyl chloroform, HCFCs, or carbon tetrachloride.

''(3) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of methyl chloroform, HCFCs, or carbon tetrachloride but cannot be met without the use of one or more of such substances.

''(b) REQUIREMENT.—In preparing the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189, set

out below] and the report required by subsection (d) of this section, the Committee shall work closely with the Strategic Environmental Research and Development Program Council and shall provide to such Council such reports.

''(c) EXTENSION OF REPORTING DEADLINE FOR CFCs.—The deadline for submitting to Congress the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 concerning the uses of CFCs is hereby extended to June 30, 1991.

''(d) REPORTING DEADLINE FOR METHYL CHLOROFORM, HCFCs, AND CARBON TETRACHLORIDE.—Not later than September 30, 1991, the Secretary shall submit to Congress a report containing the results of the study by the Committee required by subsection (a)(1) of this section.''

REQUIREMENT FOR DEVELOPMENT OF ENVIRONMENTAL DATA BASE

Pub. L. 101–189, div. A, title III, §352, Nov. 29, 1989, 103 Stat. 1423, provided that:

''(a) ENVIRONMENTAL DATA BASE.—The Secretary of Defense shall develop and maintain a comprehensive data base on environmental activities carried out by the Department of Defense pursuant to, and environmental compliance obligations to which the Department is subject under, chapter 160 of title 10, United States Code, and all other applicable Federal and State environmental laws. At a minimum, the information in the data base shall include all the fines and penalties assessed against the Department of Defense pursuant to environmental laws and paid by the Department, all notices of violations of environmental laws received by the Department, and all obligations of the Department for compliance with environmental laws. The Secretary may include any other information he considers appropriate.

''(b) REPORT.—Not later than one year after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress in development of the data base required under subsection (a). The report shall include a summary of the information collected for the data base with respect to environmental activities during 1989.''

FUNDING FOR WASTE MINIMIZATION PROGRAMS FOR CERTAIN INDUSTRIAL-TYPE ACTIVITIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, §354, Nov. 29, 1989, 103 Stat. 1424, as amended by Pub. L. 102–190, div. A, title III, §332, Dec. 5, 1991, 105 Stat. 1340, provided that:

''(a) REQUIREMENT TO ESTABLISH WASTE MINIMIZATION PROGRAM.—The Secretary of Defense shall require the Secretary of each military department to establish a program for fiscal years 1992, 1993, and 1994 to reduce the volume of solid and hazardous wastes disposed of, and hazardous materials used by, each industrial-type activity within the department that is a depot maintenance installation and for which a working-capital fund has been established under section 2208 of title 10, United States Code.

''(b) FUNDING.—Funding for the waste minimization program in each military department shall come out of payments received by the working-capital funds established for industrial-type and commercial-type activities of the department. The level of funding for each of fiscal years 1992, 1993, and 1994 shall be not less than ½ of 1 percent of the amount of such payments received during fiscal year 1988 that were used for depot maintenance installation functions at industrial-type activities. The required level of funding for fiscal year 1992 may be reduced by amounts expended for waste minimization during fiscal years 1990 and 1991. In any case in which a military department fails to spend funds at the level required by this subsection for the waste minimization program, the Secretary concerned shall submit to Congress a report explaining the reasons for the failure.

''(c) NOTICE OF EXCLUDED ACTIVITIES.—Not later than 90 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to Congress the name of each industrial-type or commercial-type activity of each military department which is not covered by the waste minimization program because the activity does not carry out depot maintenance installation functions.

''(d) USE OF FUNDS.—Funds available for the waste minimization programs established pursuant to this section shall be used to carry out waste minimization projects at depot maintenance installations. The types of expenses for which such funds may be used include the following (if such expense is related to a waste minimization project):

''(1) Operating expenses (including salaries).

''(2) Equipment purchase expenses.

''(3) Facility modification expenses.

''(4) Process change expenses.

''(5) Product substitution expenses.

''(6) Military construction expenses.

''(7) Research, development, test, and evaluation expenses.

''(8) Expenses for the lease of equipment or facilities.

''(e) RECOVERY OF COSTS.—Each project carried out at an industrial-type activity as part of a waste minimization program established pursuant to this section shall be designed to achieve, over the expected useful life of the project, reductions in the cost of the disposal of solid and hazardous wastes generated by the activity in an amount which is not less than the cost of the project. The Secretary of a military department may provide funds for a project that does not meet the requirement of the preceding sentence if the Secretary certifies to Congress that—

''(1) the project will result in a reduction of solid or hazardous waste disposed of, or hazardous materials used by, the activity; or

''(2) the project will eliminate or reduce the likelihood of harm to human health or the environment.''

USE OF CHLOROFLUOROCARBONS AND HALONS IN DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, §356, Nov. 29, 1989, 103 Stat. 1425, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

''(a) CHLOROFLUOROCARBONS EMISSION REDUCTION.—The Secretary of Defense shall formulate and carry out, through the Under Secretary of Defense for Acquisition and Technology, a program to reduce the unnecessary release of chlorofluorocarbons (hereinafter in this section referred to as 'CFCs') and halons into the atmosphere in connection with maintenance operations and training and testing practices of the Department of Defense.

''(b) REPORT.—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the program the Secretary proposes to carry out pursuant to subsection (a). The Secretary shall specify in the report the reduction goals that are attainable on the basis of known technology, including the use of refrigerant recovery systems currently available. The Secretary shall include in the report a schedule for meeting those goals. The Secretary shall also include in such report reduction goals that can be achieved only with the use of new technology and assess the technologies and investment that will be required to attain those goals within a five-year period.

''(2) Before the report required under paragraph (1) is submitted to the committees named in such paragraph, the Secretary shall transmit a copy of the report to the Administrator of the Environmental Protection Agency for comment.

''(c) DOD REQUIREMENTS FOR CFCs.—(1) Not later than 30 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary shall establish an advisory

committee to be known as the 'CFC Advisory Committee' (hereinafter in this section referred to as the 'Committee'). The Committee shall be composed of not more than 15 members, with an equal number of representatives from the Department of Defense, the Environmental Protection Agency, and defense contractors. Members representing defense contractors shall be contractors that supply the Department of Defense with products or equipment that require the use of CFCs.

''(2) It shall be the function of the Committee to study (A) the use of CFCs by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the cost and feasibility of using alternative compounds for CFCs or using alternative technologies that do not require the use of CFCs.

''(3) Within 120 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of CFCs.

''(4) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of CFCs but cannot be met without the use of CFCs.

''(d) REPORT.—Not later than September 30, 1990, the Secretary shall submit to the committees named in subsection (b) a report containing the results of the study by the Committee. The report shall—

''(1) identify cases in which the Committee found that substitutes for CFCs could be made most expeditiously;

''(2) identify the feasibility and cost of substituting compounds or technologies for CFC uses referred to in subsection (c)(3) and estimate the time necessary for completing the substitution;

''(3) identify CFC uses referred to in subsection (c)(4) for which substitutes are not currently available and indicate the reasons substitutes are not available;

''(4) describe the types of research programs that should be undertaken to identify substitute compounds or technologies for CFC uses referred to in paragraphs (3) and (4) of subsection (c) and estimate the cost of the program;

''(5) recommend procedures to expedite the use of substitute compounds and technologies offered by contractors to replace CFC uses;

''(6) estimate the earliest date on which CFCs will no longer be required for military applications; and

''(7) estimate the cost of revising military specifications for the use of substitutes for CFCs, the additional costs resulting from modification of Department of Defense contracts to provide for the use of substitutes for CFCs, and the cost of purchasing new equipment and reverification necessitated by the use of substitutes for CFCs.''

REPORT ON ENVIRONMENTAL REQUIREMENTS AND PRIORITIES

Pub. L. 101–189, div. A, title III, § 358, Nov. 29, 1989, 103 Stat. 1427, directed Secretary of Defense, not later than two years after Nov. 29, 1989, to submit to Congress a comprehensive report on the long-range environmental challenges and goals of the Department of Defense.

STUDY OF WASTE RECYCLING

Pub. L. 101–189, div. A, title III, § 361, Nov. 29, 1989, 103 Stat. 1429, as amended by Pub. L. 101–510, div. A, title III, § 343, Nov. 5, 1990, 104 Stat. 1538, provided that:

''(a) STUDY.—The Secretary of Defense shall conduct a study of the following:

''(1) Current practices and future plans for managing postconsumer waste at facilities of the Department of Defense at which such waste is generated, including commissary and exchange stores, cafeterias, and mess halls.

''(2) The feasibility of such Department of Defense facilities participating in programs at military installations or in local communities to recycle the postconsumer waste generated at the facilities.

''(b) POSTCONSUMER WASTE DEFINED.—For purposes of this section, the term 'postconsumer waste' means garbage and refuse, including items that have passed through their end use as consumer items.

''(c) REPORT.—Not later than March 1, 1991, the Secretary of Defense shall submit to Congress a report describing the findings and conclusions of the Secretary resulting from the study.''

USE OF DEPARTMENT OF DEFENSE APPROPRIATIONS FOR REMOVAL OF UNSAFE BUILDINGS OR DEBRIS

Pub. L. 101–165, title IX, § 9038, Nov. 21, 1989, 103 Stat. 1137, which authorized appropriations available to the Department of Defense to be used at sites formerly used by the Department for removal of unsafe buildings or debris of the Department and required that removal be completed before the property is released from Federal Government control, was repealed and restated in subsecs. (f) and (g) of this section by Pub. L. 101–510, div. A, title XIV, § 1481(i), Nov. 5, 1990, 104 Stat. 1708.

§ 2702. Research, development, and demonstration program

(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include research, development, and demonstration with respect to each of the following:

(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agreements with, and make grants to, universities,

public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

(d) INFORMATION COLLECTION AND DISSEMINATION.—

(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1721.)

REFERENCES IN TEXT

Section 311(a)(5) of CERCLA, referred to in subsec. (a), is classified to section 9660(a)(5) of Title 42, The Public Health and Welfare.

§2703. Environmental restoration transfer account

(a) ESTABLISHMENT OF TRANSFER ACCOUNT.—

(1) ESTABLISHMENT.—There is hereby established in the Department of Defense an account to be known as the ''Defense Environmental Restoration Account'' (hereinafter in this section referred to as the ''transfer account''). All sums appropriated to carry out the functions of the Secretary of Defense relating to environmental restoration under this chapter or any other provision of law shall be appropriated to the transfer account.

(2) REQUIREMENT OF AUTHORIZATION OF APPROPRIATIONS.—No funds may be appropriated to the transfer account unless such sums have been specifically authorized by law.

(3) AVAILABILITY OF FUNDS IN TRANSFER ACCOUNT.—Amounts appropriated to the transfer account shall remain available until transferred under subsection (b).

(b) AUTHORITY TO TRANSFER TO OTHER DOD ACCOUNTS.—Amounts in the transfer account shall be available to be transferred by the Secretary to any appropriation account or fund of the Department for obligation from that account or fund. Funds so transferred shall be merged with and available for the same purposes and for the same period as the account or fund to which transferred.

(c) OBLIGATION OF TRANSFERRED AMOUNTS.—Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter or environmental restoration functions under any other provision of law.

(d) BUDGET REPORTS.—In proposing the Budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amount requested for environmental restoration programs of the Department of Defense under this chapter or any other Act.

(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.

(f) PAYMENT OF FINES AND PENALTIES.—None of the funds appropriated to the transfer account for fiscal years 1995 through 1999 may be used for the payment of a fine or penalty imposed against the Department of Defense unless the act or omission for which the fine or penalty is imposed arises out of an activity funded by the transfer account.

(Added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 103–337, div. A, title III, §321, Oct. 5, 1994, 108 Stat. 2710.)

REFERENCES IN TEXT

Section 107 of CERCLA, referred to in subsec. (e), is classified to section 9607 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–337 added subsec. (f).

EFFECTIVE DATE

Section 211(c) of Pub. L. 99–499 provided that: ''Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2705 of this title.

§2704. Commonly found unregulated hazardous substances

(a) NOTICE TO HHS.—

(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

(2) DEFINITION.—In this subsection, the term ''unregulated hazardous substance'' means a hazardous substance—

(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous

substance in order to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

(d) EPA HEALTH ADVISORIES.—

(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

(A) for which no advisory exists;

(B) which is found to threaten drinking water; and

(C) which is emanating from a facility under the jurisdiction of the Secretary.

(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 102–25, title VII, § 701(j)(10), Apr. 6, 1991, 105 Stat. 116.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in subsec. (a)(2)(A), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (a)(2)(A), is Pub. L. 93–523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (§ 300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a)(2)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42. On enactment of Pub. L. 95–95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Clean Water Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section 104(i) of CERCLA, referred to in subsecs. (c), (e), and (f), is classified to section 9604(i) of Title 42, The Public Health and Welfare.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–25 substituted ''Agency for Toxic Substances'' for ''Agency of Toxic Substances''.

§ 2705. Notice of environmental restoration activities

(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

(1) The discovery of releases or threatened releases of hazardous substances at the facility.

(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

(d) RESTORATION ADVISORY BOARD.—(1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit the establishment of a restoration advisory board in connection with any installation (or group of nearby installations) where the Secretary is planning or implementing environmental restoration activities.

(2) The Secretary shall prescribe regulations regarding the characteristics, composition, funding, and establishment of restoration advisory boards pursuant to this subsection. However, the issuance of regulations shall not be a precondition to the establishment of a restoration advisory board or affect the existence or operation of a restoration advisory board established before the date of the enactment of this section.[1]

(3) The Secretary may provide for the payment of routine administrative expenses of a restoration advisory board from funds available for the operation and maintenance of the installation (or installations) for which the board is established or from the funds available under subsection (e)(3).

(e) ASSISTANCE FOR CITIZEN PARTICIPATION.—(1) Using funds made available under paragraph (3), the Secretary may make technical assistance grants under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617(e)) in connection with installations containing facilities listed on the National Priorities List.

(2)(A) Subject to subparagraph (B), the Secretary shall make available under paragraph (3) funds to facilitate the participation of individuals from the private sector on technical review committees and restoration advisory boards at installations not covered by paragraph (1) for the purpose of ensuring public input into the planning and implementation of environmental restoration activities at the installations for which such committees and boards are in operation.

(B) The private individuals who are members of a committee or advisory board are eligible for funding assistance under this paragraph only if they reside in the vicinity of the installation (or installations) for which the committee or advisory board is established and are not potentially responsible parties with respect to environmental hazards at any installation. Funds shall be paid to, and administered by, the committee or advisory board on which the private individuals are members for accounting and financial management purposes, subject to subparagraph (C).

(C) Individuals who are local community members of a technical review committee or restoration advisory board may use funds made available under this paragraph only—

(i) to obtain technical assistance in interpreting scientific and engineering issues with regard to the nature of environmental hazards at an installation and the restoration activities proposed for or conducted at the installation; and

(ii) to assist such members and affected citizens to participate more effectively in environmental restoration activities at the installation.

(D) The members of a technical review committee or restoration advisory board may use funds made available under this paragraph to employ technical or other experts, in accordance with the regulations prescribed under subsection (d)(2).

(3)(A) Subject to subparagraph (B), the Secretary shall make funds available under this subsection using funds in the following accounts:

(i) In the case of a military installation not closed pursuant to a base closure law, the Defense Environmental Restoration Account established in section 2703(a) of this title.

(ii) In the case of a technical review committee or restoration advisory board established for a military installation to be closed, the Department of Defense Base Closure Account 1990 established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(B) The total amount of funds available under this subsection for fiscal year 1995 may not exceed $7,500,000.

(f) INVOLVEMENT IN DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.—If a technical review committee or restoration advisory board is established with respect to an installation (or group of installations), the Secretary shall consult with and seek the advice of the committee or board on the following issues:

(1) Identifying environmental restoration activities and projects at the installation or installations.

(2) Monitoring progress on these activities and projects.

[1] So in original. Probably should be ''subsection.''

(3) Collecting information regarding restoration priorities for the installation or installations.

(4) Addressing land use, level of restoration, acceptable risk, and waste management and technology development issues related to environmental restoration at the installation or installations.

(5) Developing environmental restoration strategies for the installation or installations.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 103–337, div. A, title III, § 326(a)–(c), Oct. 5, 1994, 108 Stat. 2712, 2713.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(2), probably means the date of enactment of section 326 of Pub. L. 103–337, which was approved Oct. 5, 1994, and which enacted subsec. (d).

AMENDMENTS

1994—Subsecs. (d) to (f). Pub. L. 103–337 added subsecs. (d) to (f).

IMPLEMENTATION REQUIREMENTS FOR RESTORATION ADVISORY BOARDS

Section 326(d) of Pub. L. 103–337 provided that: ''Not later than 180 days after the date on which the Secretary of Defense announces a decision to establish restoration advisory boards, the Secretary shall—

''(1) prescribe the regulations required under subsection (d)(2) of section 2705 of title 10, United States Code, as added by subsection (a); and

''(2) take appropriate actions to notify the public of the availability of funding under subsection (e) of such section, as added by subsection (b).''

REPORT ON RESTORATION ADVISORY BOARDS AND ASSISTANCE FOR CITIZEN PARTICIPATION ON COMMITTEES AND BOARDS

Section 326(e) of Pub. L. 103–337 provided that: ''Not later than May 1, 1996, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives [now Committee on Armed Services of the Senate and Committee on National Security of the House of Representatives] a report regarding—

''(1) the establishment of restoration advisory boards under subsection (d) of section 2705 of title 10, United States Code, as added by subsection (a); and

''(2) the expenditure of funds for assistance for citizen participation on technical review committees and restoration advisory boards under subsection (e) of such section, as added by subsection (b).''

§ 2706. Annual reports to Congress

(a) REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 30 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on the progress made by the Secretary in carrying out environmental restoration activities at military installations.

(2) Each such report shall include, with respect to environmental restoration activities for each military installation, the following:

(A) A statement of the number of sites at which a hazardous substance has been identified.

(B) A statement of the status of response actions proposed for or initiated at the military installation.

(C) A statement of the total cost estimated for such response actions.

(D) A statement of the amount of funds obligated by the Secretary for such response actions, and the progress made in implementing the response actions during the fiscal year preceding the year in which the report is submitted, including an explanation of—

(i) any cost overruns for such response actions, if the amount of funds obligated for those response actions exceeds the estimated cost for those response actions by the greater of 15 percent of the estimated cost or $10,000,000; and

(ii) any deviation in the schedule (including a milestone schedule specified in an agreement, order, or mandate) for such response actions of more than 180 days.

(E) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, such response actions during the fiscal year in which the report is submitted.

(F) A statement of the amount of funds requested for such response actions for the five fiscal years following the fiscal year in which the report is submitted, and the anticipated progress in implementing such response actions for the fiscal year for which the budget is submitted.

(G) A statement of the total costs incurred for such response actions as of the date of the submission of the report.

(H) A statement of the estimated cost of completing all environmental restoration activities required with respect to the military installation, including, where relevant, the estimated cost of such activities in each of the five fiscal years following the fiscal year in which the report is submitted.

(I) A statement of the estimated schedule for completing all environmental restoration activities at the military installation.

(b) REPORT ON ENVIRONMENTAL COMPLIANCE ACTIVITIES.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 30 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on the progress made by the Secretary in carrying out environmental compliance activities at military installations.

(2) Each such report shall include the following:

(A) A statement of the funding levels and full-time personnel required for the Department of Defense to comply with applicable environmental laws during the fiscal year for which the budget is submitted, setting forth separately the funding levels and personnel required for the Department of Defense as a whole and for each military installation.

(B) A statement of the funding levels and full-time personnel requested for such purposes in the budget submitted by the President at the same time as the report, including—

(i) an explanation of any differences between the funding level and personnel requirements and the funding level and personnel requests in the budget; and

(ii) a statement setting forth separately the funding levels and full-time personnel requested for the Department of Defense as a whole and for each military installation.

(C) A projection of the funding levels and the number of full-time personnel that will be required over the five fiscal years following the fiscal year in which the report is submitted for the Department of Defense to comply with applicable environmental laws, setting forth separately such projections for the Department of Defense as a whole and for each military installation.

(D) An analysis of the effect that compliance with such environmental laws may have on the operations and mission capabilities of the Department of Defense as a whole and of each military installation.

(E) A statement of the funding levels requested in the budget submitted by the President at the same time as the report for carrying out research, development, testing, and evaluation for environmental purposes or environmental activities of the Department of Defense. The statement shall set forth separately the funding levels requested for the Department of Defense as a whole and for each military department and Defense Agency.

(F) A description of the number and duties of all current full-time civilian and military personnel who carry out environmental activities (including research) for the Department of Defense, including a description of the organizational structure of such personnel from the Secretary of Defense down to the military installation level.

(G) A statement of the funding levels and personnel required for the Department of Defense to comply with applicable environmental requirements for military installations located outside the United States during the fiscal year for which the budget is submitted.

(c) REPORT ON CONTRACTOR REIMBURSEMENT COSTS.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 30 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on payments made by the Secretary to defense contractors for the costs of environmental response actions.

(2) Each such report shall include, for the fiscal year preceding the year in which the report is submitted, the following:

(A) An estimate of the payments made by the Secretary to any defense contractor (other than a response action contractor) for the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.

(B) A statement of the amount and current status of any pending requests by any defense contractor (other than a response action contractor) for payment of the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.

(d) DEFINITIONS.—In this section:

(1) The term ''defense contractor''—

(A) means an entity (other than an entity referred to in subparagraph (B)) that is one of the top 100 entities receiving the largest dollar volume of prime contract awards by the Department of Defense during the fiscal year covered by the report; and

(B) does not include small business concerns, commercial companies (or segments of commercial companies) providing commercial items to the Department of Defense.

(2) The term ''military installation'' has the meaning given such term in section 2687(e) of this title, except that such term does not include a homeport facility for any ship and includes—

(A) each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense;

(B) each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances; and

(C) each facility or site at which the Secretary is conducting environmental restoration activities.

(3) The term ''response action contractor'' has the meaning given such term in section 119(e)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)).

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 101–189, div. A, title III, § 357(a)(1), (2)(A), Nov. 29, 1989, 103 Stat. 1426, 1427; Pub. L. 101–510, div. A, title III, §§ 341, 342(a), Nov. 5, 1990, 104 Stat. 1536, 1537; Pub. L. 103–160, div. A, title X, § 1001(a)–(d), Nov. 30, 1993, 107 Stat. 1742–1744; Pub. L. 103–337, div. A, title X, § 1070(b)(9), Oct. 5, 1994, 108 Stat. 2857.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 made technical correction to Pub. L. 103–160, § 1001(a). See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–160, § 1001(a), as amended by Pub. L. 103–337, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

''(2) Each such report shall include the following:

''(A) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

''(B) The status of response actions contemplated or undertaken at each such facility.

''(C) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

''(D) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.''

Subsec. (b). Pub. L. 103–160, § 1001(b), inserted ''Activities'' in heading and amended text generally, restating substance of former par. (1) in pars. (1) and (2) and deleting substance of former par. (2) which defined ''military installation''.

Subsecs. (c), (d). Pub. L. 103–160, § 1001(c), (d), added subsecs. (c) and (d).

1990—Subsec. (b). Pub. L. 101–510, § 342(a), added subpar. (G) at end of par. (1).

Pub. L. 101–510, § 341, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''ENVIRONMENTAL BUDGET REPORT.—(1) Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the Secretary of Defense shall submit to Congress a report on—

''(A) the funding levels required for the Department of Defense to comply with applicable environmental laws during the fiscal year for which the budget is submitted; and

''(B) the funding levels requested for such purposes in the budget as submitted by the President.

''(2) The Secretary shall include in the report an explanation of any differences in the funding level requirements and the funding level requests in the budget.''

1989—Pub. L. 101–189 substituted ''reports'' for ''report'' in section catchline, designated subsec. (a) as subsec. (a)(1), struck out subsec. (b) heading ''MATTERS TO BE INCLUDED'', redesignated subsec. (b) as subsec. (a)(2) and pars. (1) to (4) as subpars. (A) to (D), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 357(b) of Pub. L. 101–189 provided that: ''The first environmental budget report under subsection (b) of section 2706 of such title [10 U.S.C. 2706(b)] (as added by subsection (a)) shall be submitted at the same time the President submits the budget for fiscal year 1992.''

TIME OF SUBMISSION OF REPORTS

Section 1001(e) of Pub. L. 103–160 provided that:

''(1) A report submitted in 1994 under subsection (a) of section 2706 of title 10, United States Code, as amended by subsection (a), and under subsection (b) of such section, as amended by subsection (b), shall be submitted not later than March 31, 1994.

''(2) A report under subsection (c) of section 2706 of such title, as added by subsection (c), shall be submitted for fiscal years beginning with fiscal year 1993. Any such report that is submitted for fiscal year 1993 or fiscal year 1994 shall be submitted not later than February 1, 1995.''

§ 2707. Definitions

In this chapter:

(1) The terms ''environment'', ''facility'', ''hazardous substance'', ''person'', ''release'', ''removal'', ''response'', ''disposal'', and ''hazardous waste'' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

(2) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1725.)

§ 2708. Contracts for handling hazardous waste from defense facilities

(a) REIMBURSEMENT REQUIREMENT.—(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by—

(A) the contractor's or subcontractor's breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility during fiscal years 1992 through 1996 for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

(2) This section does not apply to—

(A) any contract or subcontract to perform remedial action or corrective action under the Defense Environmental Restoration Program, other programs or activities of the Department of Defense, or authorized State hazardous waste programs;

(B) any contract or subcontract under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(C) any contract or subcontract to dispose of ammunition or solid rocket motors.

(c) EXCEPTION TO REIMBURSEMENT REQUIREMENT.—Notwithstanding subsection (a), in the case of any contract to which this section applies, if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) there is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by subsection (a) for such contract; or

(2) failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),

then the contract may be awarded without including the reimbursement provision required by subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''hazardous waste'' has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls.

(2) The term ''remedial action'' has the meaning given that term by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(24)).

(3) The term ''corrective action'' has the meaning given that term under section 3004(u) of the Solid Waste Disposal Act (42 U.S.C. 6924(u)).

(4) The term ''polychlorinated biphenyls'' has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) EFFECT ON LIABILITY.—Nothing in this section shall affect the liability of the Federal Government under any Federal or State law or under common law.

(Added Pub. L. 102–190, div. A, title III, §331(a)(1), Dec. 5, 1991, 105 Stat. 1339; amended Pub. L. 102–484, div. A, title III, §321, title X, §1052(36), Oct. 23, 1992, 106 Stat. 2365, 2501; Pub. L. 103–160, div. A, title X, §1004, Nov. 30, 1993, 107 Stat. 1748.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–160 substituted ''fiscal years 1992 through 1996'' for ''fiscal years 1992 and 1993''.

1992—Subsec. (b)(1). Pub. L. 102–484, §1052(36)(A), substituted ''each contract'' for ''all contracts'' and ''any subcontract under any such contract'' for ''all subcontracts under such contracts''.

Pub. L. 102–484, §321, substituted ''fiscal years 1992 and 1993'' for ''fiscal year 1992''.

Subsec. (d). Pub. L. 102–484, §1052(36)(B), substituted ''In'' for ''For purposes of'' in introductory provisions.

EFFECTIVE DATE

Section 331(b) of Pub. L. 102–190 provided that: ''Section 2708 of title 10, United States Code, shall apply with respect to contracts entered into after the expiration of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

CHAPTER 161—PROPERTY RECORDS AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY

Sec.
2721. Property records: maintenance on quantitative and monetary basis.
2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title X, §1061(a)(17)(B), Dec. 5, 1991, 105 Stat. 1473, substituted ''Property records: maintenance on quantitative and monetary basis'' for ''Basis'' in item 2721.

1990—Pub. L. 101–510, div. A, title XIII, §1331(7), Nov. 5, 1990, 104 Stat. 1673, substituted ''Basis'' for ''Basis: reports'' in item 2721.

1988—Pub. L. 100–456, div. A, title III, §344(b)(1), Sept. 29, 1988, 102 Stat. 1962, inserted ''AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY'' in chapter heading and added item 2722.

1986—Pub. L. 99–499, title II, §211(a)(3), Oct. 17, 1986, 100 Stat. 1725, redesignated item 2701 as item 2721.

§2721. Property records: maintenance on quantitative and monetary basis

(a) Under regulations prescribed by him, the Secretary of Defense shall have the records of the fixed property, installations, major equipment items, and stored supplies of the military departments maintained on both a quantitative and a monetary basis, so far as practicable.

(b) The regulations prescribed pursuant to subsection (a) shall include a requirement that the records maintained under such subsection—

(1) to the extent practicable, provide up-to-date information on all items in the inventory of the Department of Defense;

(2) indicate whether the inventory of each item is sufficient or excessive in relation to the needs of the Department for that item; and

(3) permit the Secretary of Defense to include in the budget submitted to Congress under section 1105 of title 31 for each fiscal year, information relating to—

(A) the amounts proposed for each appropriation account in such budget for inventory purchases of the Department of Defense; and

(B) the amounts obligated for such inventory purchases out of the corresponding appropriations account for the preceding fiscal year.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152, §2701; renumbered §2721, Oct. 17, 1986, Pub. L. 99–499, title II, §211(a)(1)(A), 100 Stat. 1719; amended Nov. 5, 1990, Pub. L. 101–510, div. A, title XIII, §1322(a)(12), 104 Stat. 1671; Dec. 5, 1991, Pub. L. 102–190, div. A, title III, §347(b), title X, §1061(a)(17)(A), 105 Stat. 1347, 1473.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2701(a)	5:172i (less last sentence).	July 26, 1947, ch. 343, §410; added Aug. 10, 1949, ch. 412, §11(410), 63 Stat. 590.
2701(b).	5:172i (last sentence).	

In subsection (a), the words ''equipment'' and ''materials'' are omitted, since the word ''supplies'', as defined in section 101(26) of this title, includes equipment and materials. The word ''stored'' is substituted for the words ''held in store by the armed services''.

In subsection (b), the words ''on property records maintained under this section'' are substituted for the word ''thereon''.

AMENDMENTS

1991—Pub. L. 102–190, §1061(a)(17)(A), substituted section catchline for one which read ''Basis: reports''.

Pub. L. 102–190, §347(b), designated existing provisions as subsec. (a) and added subsec. (b).

1990—Pub. L. 101–510 struck out ''(a)'' before ''Under regulations'' and struck out subsec. (b) which read as follows: ''The Secretary shall report once a year to Congress and the President on property records maintained under this section.''

IMPLEMENTATION OF 1991 AMENDMENT

Section 347(c) of Pub. L. 102–190 provided that: ''The Secretary of Defense shall establish the uniform system of valuation described in section 2458(a)(3) of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by section 2721(b) of such title (as added by subsection (b)), not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

CROSS REFERENCES

Cataloging and standardization of supplies, see section 2451 et seq. of this title.

Interchange of property and services and disposition of obsolete, surplus, or unclaimed property, see section 2571 et seq. of this title.

Real and personal property and lease of non-excess property, see section 2662 et seq. of this title.

§ 2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury

(a) IN GENERAL.—The Secretary of Defense shall report the theft or other loss of any ammunition, destructive device, or explosive material from the stocks of the Department of Defense to the Secretary of the Treasury within 72 hours, if possible, after the discovery of such theft or loss.

(b) EXCLUSION FOR CERTAIN ITEMS.—The Secretary of Defense may exclude from the reporting requirement under subsection (a) any item referred to in that subsection if—

(1) the Secretary determines that the item represents a low risk of danger to the public and would be of minimal utility to any person who may illegally receive such item; and

(2) the exclusion of such item is specified as being excluded from the reporting requirement in a memorandum of agreement between the Secretary of Defense and the Secretary of the Treasury.

(c) DEFINITIONS.—In this section:

(1) The term ''explosive material'' means explosives, blasting agents, and detonators.

(2) The terms ''destructive device'' and ''ammunition'' have the meanings given those terms by paragraphs (4) and (17), respectively, of section 921 of title 18.

(Added Pub. L. 100–456, div. A, title III, § 344(a), Sept. 29, 1988, 102 Stat. 1961.)

EFFECTIVE DATE

Section 344(c) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect with respect to thefts and losses discovered more than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

CHAPTER 163—MILITARY CLAIMS

Sec.
2731. Definition.
2732. Payment of claims: availability of appropriations.
2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.
2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.
2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements.
2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.
2735. Settlement: final and conclusive.
2736. Property loss; personal injury or death: advance payment.
2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.
2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title V, § 557(b), Oct. 5, 1994, 108 Stat. 2776, added item 2738.

1990—Pub. L. 101–510, div. A, title XIV, § 1481(j)(2), Nov. 5, 1990, 104 Stat. 1708, added item 2732.

1984—Pub. L. 98–525, title XIV, § 1405(42)(B), Oct. 19, 1984, 98 Stat. 2625, substituted ''in foreign countries'' for '': foreign countries'' in item 2734a.

1968—Pub. L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874, substituted ''advance payment'' for ''incident to aircraft or missile operation'' in item 2736.

1966—Pub. L. 89–718, § 21(b), Nov. 2, 1966, 80 Stat. 1118, substituted ''2737'' for ''2736'' as item number for ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

1964—Pub. L. 88–558, § 5(2), Aug. 31, 1964, 78 Stat. 768, struck out item 2732 ''Property loss: incident to service; members of Army, Navy, Air Force, or Marine Corps and civilian employees'', effective two years after Aug. 31, 1964. Pub. L. 88–558, was itself repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

1962—Pub. L. 87–769, § 1(1)(B), Oct. 9, 1962, 76 Stat. 768, added item 2736 ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

Pub. L. 87–651, title I, § 113(b), Sept. 7, 1962, 76 Stat. 513, added items 2734a and 2734b.

1961—Pub. L. 87–212, § 1(2), Sept. 8, 1961, 75 Stat. 488, added item 2736 ''Property loss; personal injury or death: incident to aircraft or missile operation''.

1959—Pub. L. 86–223, § 1(2), Sept. 1, 1959, 73 Stat. 454, substituted ''armed forces'' for ''Department of Army, Navy, or Air Force'' in item 2734.

CROSS REFERENCES

Claims—
Air Force, see section 9801 et seq. of this title.
Army, see section 4801 et seq. of this title.
Navy, see section 7621 et seq. of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 213a.

§ 2731. Definition

In this chapter, ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2731	[No source].	[No source].

The revised section is inserted for clarity and is based on usage in the source laws for this revised chapter.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by sections 2731, 2732, and 2735 of this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 857a of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a.

§ 2732. Payment of claims: availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101–510, div. A, title XIV, § 1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 100–463, title VIII, § 8098, Oct. 1, 1988, 102 Stat. 2270–35, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, div. A, title XIV, § 1481(j)(3), Nov. 5, 1990, 104 Stat. 1709.

A prior section 2732, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85–861, §§ 1(53), 33(a)(16), 72 Stat. 1461, 1565; Sept. 15, 1965, Pub. L. 89–185, § 1, 79 Stat. 789, related to settlement of property loss incident to service, prior to repeal by Pub. L. 88–558, § 5(3), Aug. 31, 1964, 78 Stat. 768, effective two years from Aug. 31, 1964. See section 3701 et seq. of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2734, 2734a, 2734b of this title.

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

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

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

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

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

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

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment or otherwise incident to noncombat activities of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 153; Aug. 23, 1958, Pub. L. 85–729, § 1, 72 Stat. 813; Sept. 2, 1958,

Pub. L. 85–861, §1(54), 72 Stat. 1461; Nov. 2, 1966, Pub. L. 89–718, §8(a), 80 Stat. 1117; Sept. 26, 1968, Pub. L. 90–522, 82 Stat. 875; Sept. 26, 1968, Pub. L. 90–525, §§1, 3–5, 82 Stat. 877, 878; July 8, 1970, Pub. L. 91–312, §2, 84 Stat. 412; July 8, 1974, Pub. L. 93–336, §1, 88 Stat. 291; Dec. 12, 1980, Pub. L. 96–513, title V, §511(94), 94 Stat. 2928; Oct. 30, 1984, Pub. L. 98–564, §1, 98 Stat. 2918.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733(a)	31:223b (1st sentence, less 52d through 62d, and 76th through 93d, words; and less proviso).	July 3, 1943, ch. 189, §1 (less 4th sentence), 57 Stat. 372; May 29, 1945, ch. 135, §4, 59 Stat. 225; June 28, 1946, ch. 514, §1, 60 Stat. 332; July 3, 1952, ch. 570, §2(c), 66 Stat. 334; Mar. 31, 1953, ch. 13 (as applicable to Act of July 3, 1952, ch. 570, §2(c)), 67 Stat. 18; June 30, 1953, ch. 172 (as applicable to Act of July 3, 1952, ch. 570, §2(c)), 67 Stat. 131.
2733(b).	[Uncodified: Aug. 2, 1946, ch. 753, §424(a) (4th clause), 60 Stat. 847]. 31:223b (76th through 93d words and proviso of 1st sentence; and 2d sentence). 31:223b (3d sentence).	Aug. 2, 1946, ch. 753, §424(a) (4th clause), 60 Stat. 847.
2733(c).	31:223b (last sentence).	
2733(d)	31:223b (52d through 62d words of 1st sentence).	
2733(e)	31:222h.	
2733(f).	[31:223b is made applicable to the Navy by 31:223d and 223e].	Dec. 28, 1945, ch. 597, §1, 59 Stat. 662; June 28, 1946, ch. 514, §2, 60 Stat. 333. Dec. 28, 1945, ch. 597, §6; added Mar. 20, 1946, ch. 104 (last par.), 60 Stat. 56.

In subsection (a), the words ''a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be'' are substituted for the words ''military personnel or civilian employees of the Department of the Army or of the Army''. The words ''whether under a lease, express or implied'' are omitted as surplusage. The words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 2731 of this title. The words ''arising on or after May 27, 1941'' are omitted as executed, since, under revised subsection (b), a claim must be filed within one year after it accrues, or within one year after the war is terminated, if it accrues in time of war.

In subsection (a)(1), the words ''or loss'' are inserted before the word ''incident'', for clarity.

In subsection (b)(1), the words ''it accrues'' are substituted for the words ''the accident or incident out of which such claim arises shall have occurred'', in 31:223b. The words ''the claim accrues'' are substituted for the words ''That if such accident or incident occurs''. The words ''not later than'' are substituted for the words ''within'' to make it clear that a claim may be presented during a war. The words ''the war is terminated'' are substituted for the words ''after peace is established'', since the other time covered is ''time of war''. 31:223b (last 49 words of proviso of 2d sentence) is omitted as executed.

In subsection (b)(2), the words ''or section 2672 of title 28'' are substituted for the words ''claims cognizable under part 2 of this title'', to reflect the express amendment of 31:223b and 223c by the fourth clause of section 424(a) of the Federal Tort Claims Act, 60 Stat. 847. Section 424(a) of the Federal Tort Claims Act referred to ''claims cognizable under part 2 of this title''. Part 2 of that act consisted of sections 403 and 404 which were repealed by section 39 of the Act of June 25, 1948, ch. 646, 62 Stat. 1008, and replaced by sections 2672 and 2673 of title 28. The words ''or possessions thereof'' are omitted, since possessions of foreign countries are not specifically covered by the section to which the words refer.

In subsection (d), the words ''claim * * * that would otherwise be covered by this section'' are substituted for the words ''such claims''.

In subsection (e), the words ''and final settlement'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733	31:223b.	Mar. 29, 1956, ch. 103, §§1–3, 70 Stat. 60, 61.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–564, §1(1), substituted ''Chief Counsel'' for ''chief legal officer'' and ''$100,000'' for ''$25,000'' in provisions preceding par. (1).

Subsec. (d). Pub. L. 98–564, §1(2), amended subsec. (d) generally, substituting ''$100,000'' for ''$25,000'' and provisions requiring Secretary to report excess to the Comptroller General for provisions requiring reporting to Congress.

Subsec. (g). Pub. L. 98–564, §1(3), substituted provisions permitting officers and employees of Secretary concerned to settle claims not otherwise payable under this section in amounts not to exceed $25,000 and providing for an appeal to Secretary concerned or his designee for provisions which provided for delegation of claims settlement authority by Secretary for cases not to exceed $5,000 and for appeal therefrom.

1980—Subsec. (f). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1974—Subsec. (a). Pub. L. 93–336, §1(1), substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336, §1(2), substituted ''$25,000'' for ''$15,000'' wherever appearing.

Subsec. (g). Pub. L. 93–336, §1(3), substituted ''$5,000'' for ''$2,500''.

1970—Subsec. (a). Pub. L. 91–312, §2(a), substituted ''$15,000'' for ''$5,000''.

Subsec. (d). Pub. L. 91–312, §2(b), substituted ''$15,000'' for ''$5,000'' wherever appearing.

1968—Subsec. (a). Pub. L. 90–525, §1, substituted ''Secretary concerned'' for ''Secretary of a military department'', and authorized the Chief Legal Officer of the Coast Guard to settle claims, settlement of claims for damage or loss to personal property in possession of the Coast Guard, and settlements when the torts are caused by civilian officers or employees and members of the Coast Guard when acting within scope of employment or otherwise incident to noncombat activities of the Coast Guard.

Subsec. (b)(4). Pub. L. 90–522, §1(1), authorized application of local law in determining effect of claimant's contributory negligence.

Subsec. (d). Pub. L. 90–525, §5, struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 90–525, §3, increased limitation on amount of settlement from $1,000 to $2,500, struck out ''military'' before ''department concerned'', and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force. See Pub. L. 90–522, §1(2), hereunder, for identical provision for appeals to Secretary concerned.

Pub. L. 90–522, §1(2), provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force.

Subsec. (h). Pub. L. 90–525, §4, added subsec. (h).

1966—Subsec. (f). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1958—Subsec. (a). Pub. L. 85–729, §1(1)(A), substituted ''the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than $5,000'' for ''any officer designated by him may settle, and pay in an amount not more than $1,000''.

Subsec. (b). Pub. L. 85–861, §1(54)(A), (B), in cl. (1), substituted ''two years'' for ''one year'' in three places and included claims accruing in time of armed conflict,

and inserted sentence providing for the determination of dates of the beginning and ending of an armed conflict.

Subsec. (c). Pub. L. 85–861, §1(54)(C), substituted provisions prohibiting payment for reimbursement for medical, hospital, or burial services furnished at the expense of the United States for provisions which prohibited allowance of claims for personal injury or death for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

Subsec. (d). Pub. L. 85–729, §1(1)(B), substituted provisions authorizing partial payments on claims over $5,000 for provisions which authorized the Secretary of the military department concerned to report a claim for more than $1,000 to Congress for its consideration.

Subsec. (e). Pub. L. 85–729, §1(1)(B), substituted ''Except as provided in subsection (d), no claim may be paid under this section'' for ''No claim may be paid under subsection (a)''.

Subsec. (g). Pub. L. 85–729, §1(1)(C), added subsec. (g).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a Amendment note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

CLAIMS FOR INJURY OR DEATH ACCRUED BEFORE MARCH 30, 1956

Section 17 of Pub. L. 85–861 disallowed claims for personal injury or death under section 2733 of this title, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred if the claim accrued before March 30, 1956.

CROSS REFERENCES

Administrative adjustment of tort claims, see section 2672 of Title 28, Judiciary and Judicial Procedure.

Travel and transportation; dependents; household and personal effects; motor vehicles; sale of bulky items; claims for proceeds; appropriations chargeable as not amending or repealing this section, see section 5564 of Title 5, Government Organization and Employees; section 554 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1588, 2735, 2736, 2738 of this title; title 5 section 5564; title 31 section 1304; title 37 section 554.

§2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of officers or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss, personal injury, or death occurs outside the United States, or the Territories, Commonwealths, or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, ''foreign country'' includes any place under the jurisdiction of the United States in a foreign country. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

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

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

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of Transportation shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations as provided in section 2732 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 154; Sept. 2, 1958, Pub. L. 85–861, § 1(55), 72 Stat. 1461; Sept. 1, 1959, Pub. L. 86–223, § 1(1), 73 Stat. 453; Apr. 8, 1960, Pub. L. 86–411, 74 Stat. 16; Sept. 26, 1968, Pub. L. 90–521, §§ 1, 3, 82 Stat. 874; July 8, 1970, Pub. L. 91–312, § 1, 84 Stat. 412; July 8, 1974, Pub. L. 93–336, § 2, 88 Stat. 292; Dec. 12, 1980, Pub. L. 96–513, title V, § 511(95), 94 Stat. 2928; Oct. 30, 1984, Pub. L. 98–564, § 2, 98 Stat. 2918; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(A), 104 Stat. 1709.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734(a)	31:224d (less 98th through 109th words and provisos).	Jan. 2, 1942, ch. 645, §§ 1 (less last proviso), 6, 7, 55 Stat. 880; restated Apr. 22, 1943, ch. 67, §§ 1 (less last proviso), 6, 7, 57 Stat. 66, 67.
2734(b).	31:224d (1st and 3d provisos).	
2734(c).	31:224d (2d proviso, less words after semicolon).	
2734(d)	31:224d (words of 2d proviso after semicolon).	
2734(e)	31:224d (98th through 109th words).	
2734(f)	31:224i.	
2734(g)	31:224h.	

In subsection (a), the words ''for such purposes'', ''or destruction'', ''public'', ''private'', ''Army * * * forces'', and ''whether under a lease, express or implied'' are omitted as surplusage. The words ''armed forces under his jurisdiction'' are substituted for the words ''Army, Air Force, Navy, or Marine Corps''. The same words are substituted for the words ''Army, Air Force, Navy, or Marine Corps forces'' to reflect the opinion of the Judge Advocate General of the Army (JAGD/D–55–51000, 17 Jan. 55). The word ''settle'' is substituted for the words ''consider, ascertain, adjust, determine'', since the word ''settle'', as defined in section 2731 of this title, includes those actions. The words ''a member thereof, or by a civilian employee of the department concerned'' are substituted for the words ''or individual members thereof, including military personnel and civilian employees''. The last sentence is substituted for the words ''including places located therein which are under the temporary or permanent jurisdiction of the United States''.

In subsection (a)(2), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the word ''accident'' is omitted as surplusage. The words ''except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944'' are omitted as executed. Clauses (2) and (3) are substituted for 31:224d (3d proviso).

In subsection (c), the first 28 words of the second proviso of 31:224d and the words ''but does not exceed $5,000'' are omitted as covered by subsection (a). The words ''commanding officer or other'' are omitted as surplusage. The word ''commissioned'' is inserted for clarity. The word ''designated'' is substituted for the words ''may prescribe''.

In subsection (d), the word ''may'' is substituted for the words ''shall have authority, if he deems''. The words ''that would otherwise be covered by this section'' are inserted for clarity. The words ''to be meritorious'' and ''character of such'' are omitted as surplusage.

In subsection (f), the words ''a military department'' are substituted for the words ''service concerned'' after the words ''the request of the''. The words ''or Commissions'' and ''even though not'' are omitted as surplusage. The words ''an armed force under the jurisdiction of another military department'' are substituted for the words ''service concerned'' after the words ''officers of the''. 31:224i (last 19 words) is omitted, since all claims are paid from one appropriation made to the Department of Defense.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734(a)	31:224d.	July 28, 1956, ch. 769, § 1, 70 Stat. 703.
2734(d)	31:224d.	
2734(f)	31:224i.	
2734(h)	31:224i–1.	

In subsections (a)(1) and (2), the words ''a foreign country'' are substituted for the words ''that country'' to make clear that damage to a political subdivision or an inhabitant of a foreign country need not have occurred in that country.

In subsection (h), the word ''settle'' is substituted for the words ''consider, ascertain, adjust, determine,'', since the word ''settle'', as defined in section 2731 of this title, includes those actions. The words ''as provided in this section'' are substituted for the words ''as described in section 224d of this title'' and 31:224i–1 (2d sentence).

AMENDMENTS

1990—Subsec. (h). Pub. L. 101–510 substituted ''as provided in section 2732 of this title'' for ''available to the Office of the Secretary of Defense for the payment of claims''.

1984—Subsec. (a). Pub. L. 98–564, § 2(1), substituted ''$100,000'' for ''$25,000'' and inserted provisions whereby employees as well as officers of the Secretary may settle claims in text preceding par. (1).

Pub. L. 98–564, § 2(2), inserted ''or employee'' after ''An officer'' in last sentence.

Subsec. (c). Pub. L. 98–564, § 2(3), substituted provisions whereby the Secretary may appoint officers and employees to act as approval authority for claims in excess of $10,000 for provisions which provided that allowance of a claim for more than $2,500 may be subject to the approval of any commissioned officer designated by the Secretary concerned.

Subsec. (d). Pub. L. 98–564, § 2(4), substituted provisions providing that if the Secretary considers a claim in excess of $100,000 meritorious, the Secretary may pay $100,000 and report any excess amount to the Comptroller General for provisions which provided that for claims in excess of $25,000 the Secretary may pay $25,000 and certify any excess to Congress as a legal claim to be paid from appropriations.

1980—Subsec. (g). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1974—Subsec. (a). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000'' in two places.

1970—Subsec. (d). Pub. L. 91–312 authorized the Secretary to pay, without certification to Congress, up to $15,000 towards the settlement of meritorious claims in excess of $15,000.

Subsec. (e). Pub. L. 91–312 excepted claims under subsec. (d) from requirement that all claims paid be accepted by the claimant in full satisfaction, and struck

out provision limiting the application of such requirement to claims payable under subsec. (a) of this section.

1968—Subsec. (a). Pub. L. 90–521, §1, struck out ''under his jurisdiction'' after ''armed forces'' in text preceding cl. (1) and permitted an officer to serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but required him to perform his duties under regulations of the department appointing the commission, respectively.

Subsec. (b)(3). Pub. L. 90–521, §3, provided for allowance of claim if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including the airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

1960—Subsec. (b). Pub. L. 86–411 substituted ''two years'' for ''one year'' in cl. (1).

1959—Pub. L. 86–223, §1(1)(A), substituted ''the armed forces'' for ''Department of Army, Navy, or Air Force'' in section catchline.

Subsec. (a). Pub. L. 86–223, §1(1)(B), substituted ''concerned'' and ''the military department concerned or the Coast Guard, as the case may be'' for ''of a military department'' and ''the department concerned'', respectively.

Subsecs. (c), (d). Pub. L. 86–223, §1(1)(C), struck out ''of the military department'' after ''Secretary''.

Subsec. (f). Pub. L. 86–223, §1(1)(D), substituted ''the department concerned'' for ''a military department'' and deleted ''military'' after ''another''.

Subsec. (g). Pub. L. 86–223, §1(1)(E), substituted provision for payment of claims against the Coast Guard arising while it is operating as a service in the Department of the Treasury out of the appropriation for the operating expenses of the Coast Guard for provisions excluding such claims unless they arise, are settled and paid while the Coast Guard is operating as a service of the Navy and authorizing Coast Guard officers to serve on claims commissions or to approve settlements, only for claims against the Coast Guard.

1958—Subsec. (a). Pub. L. 85–861, §1(55)(A)–(D), struck out ''arising in foreign countries'' after ''meritorious claims'', and substituted ''$15,000'' for ''$5,000'', ''outside the United States, or the Territories, Commonwealths, or possessions,'' for ''in that country'', and ''a foreign country'' for ''that country'' in cls. (1) and (2).

Subsec. (d). Pub. L. 85–861, §1(55)(A), substituted ''$15,000'' for ''$5,000''.

Subsec. (f). Pub. L. 85–861, §1(55)(E), substituted ''Upon'' for ''In time of war and upon''.

Subsec. (h). Pub. L. 85–861, §1(55)(F), added subsec. (h).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2733, 2735, 2736 of this title; title 31 section 1304; title 32 section 715; title 36 section 138b.

§2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may—

(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Transportation or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of appropriations as provided in section 2732 of this title, subject to reimbursement from the Department of Transportation.

(Added Pub. L. 87–651, title I, §113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 90–521, §4, Sept. 26, 1968, 82 Stat. 874; Pub. L. 94–390, §1(1), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 98–525, title XIV, §1405(42)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–510, div. A, title XIV, §1481(j)(4)(B), Nov. 5, 1990, 104 Stat. 1709.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734a(a) ...	31:224i–2 (less proviso).	Aug. 31, 1954, ch. 1152, §§1 (less proviso, as applicable to §2), 4 (as applicable to §1), 68 Stat. 1006, 1007.
2734a(b) ...	31:224i–2 (proviso, as applicable to 31:224i–2).	
2734a(c).	31:224i–5 (as applicable to 31–224i–2).	

In subsection (a), the following substitutions are made: ''Under'' for ''Pursuant to the terms''; ''country'' for ''government''; ''under its laws and regulations'' for ''in accordance with the laws and regulations of such foreign government''; ''may'' for ''is authorized''; ''amounts'' for ''sums''; and ''spent'' for ''expended''. The words ''now or may hereafter be'' are omitted as surplusage.

In subsection (b), the following substitutions are made: ''act'' for ''action'' and ''may'' for ''shall''.

In subsection (c), the words ''pro rata'' are omitted as surplusage. The following substitutions are made:

''under this section'' for ''by the United States with respect to a settlement, award, or compromise made pursuant to sections 224i–2 to 224i–5 of this title''; ''to buy'' for ''for the purchase of''; and ''needed'' for ''necessary''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510, § 1481(j)(4)(B)(i), substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

Subsec. (d). Pub. L. 101–510, § 1481(j)(4)(B)(ii), substituted ''appropriations as provided in section 2732 of this title'' for ''the appropriation for claims of the Department of Defense''.

1984—Pub. L. 98–525 substituted ''in foreign countries'' for ''; foreign coun-countries'' in section catchline.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing the Secretary of Defense or the Secretary of Transportation to reimburse or pay, including arbitration costs, claims arising under international agreements to which the United States is a party and providing for settlement or adjudication and cost sharing based on the responsibility of the United States under the law of the other party to the international agreement, for provisions authorizing the Secretary of Defense to reimburse or pay claims arising under international agreements to which the United States is a party and providing for adjudication by the other country under its laws and regulations.

1968—Subsec. (c). Pub. L. 90–521, § 4(a), provided for payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation out of appropriations for operating expenses of the Coast Guard.

Subsec. (d). Pub. L. 90–521, § 4(b), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2735 of this title.

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title.

(Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 94–390, § 1(2), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(C), Nov. 5, 1990, 104 Stat. 1709.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734b(a) ...	31:224i–3.	Aug. 31, 1954, ch. 1152, §§ 1 (proviso, less applicability to § 1), 2, 3, 4 (less applicability to § 1), 68 Stat. 1006, 1007.
2734b(b) ...	31:224i–4.	
2734b(c) ...	31:224i–2 (proviso, less applicability to 31:224i–2).	
2734b(d).	31:224i–5 (less applicability to 31:224i–2).	

In subsection (a), the following omissions as surplusage are made: ''the terms of'' and ''now or may hereafter be''. The following substitutions are made: ''country'' for ''government''; ''in the United States, or a Territory, Commonwealth, or possession'' for ''within the territory of the United States''; ''under'' for ''in accordance with''; ''upon which they are based were the acts or omissions of'' for ''were performed''.

In subsection (b), the following substitutions are made: ''under this section'' for ''asserted under section 224i–3 of this title''; ''the dispute'' for ''such disputed question or questions''; ''under'' for ''in accordance with the terms of''; and the last sentence for the last sentence of 31:224i–4. The following omissions as surplusage are made: ''of a civilian employee or military personnel of a foreign country'' and ''of the armed forces for such party''.

In subsection (c), the word ''act'' is substituted for the word ''action''.

In subsection (d), the words ''under this section'' are substituted for the words ''by the United States with respect to a settlement, award, or compromise made pursuant to section 224i–2 to 224i–5 of this title''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing claims, for which another armed force is legally responsible under applicable United States law, to be prosecuted against the United States or settled by the United States in accordance with an international agreement providing for the settlement or adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were of a member or a civilian employee of an armed force of the United States, for provisions authorizing claims to be prosecuted against the United States or settled by the United States by adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were the acts or omissions in the performance of official duty of a civilian employee or a member of an armed force.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2735 of this title.

§ 2735. Settlement: final and conclusive

Notwithstanding any other provision of law, the settlement of a claim under section 2733, 2734, 2734a, 2734b, or 2737 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Aug. 31, 1964, Pub. L. 88–558, § 5(1), 78 Stat. 768; Aug. 29, 1972, Pub. L. 92–413, 86 Stat. 649.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2735	31:222c (1st sentence of (e)). 31:223b (4th sentence). 31:224d (last proviso).	May 29, 1945, ch. 135, § 1 (e) (1st sentence); restated July 3, 1952, ch. 548, § 1 (1st sentence of last par.), 66 Stat. 323. July 3, 1943, ch. 189, § 1 (4th sentence), 57 Stat. 373. Jan. 2, 1942, ch. 645, § 1 (last proviso); restated Apr. 22, 1943, ch. 67, § 1 (last proviso), 57 Stat. 67.

The words ''for all purposes'' and ''to the contrary'', in each source credit; ''by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Defense, or their designees'' and ''such regulations as they, respectively, may prescribe hereunder'', in 31:222c(e); ''by the Secretary of the Army, or his designee'' and ''such regulations as he may prescribe hereunder'', in 31:223b; and ''by such Commissions'', in 31:224d; are omitted as surplusage.

AMENDMENTS

1972—Pub. L. 92–413 inserted reference to sections 2734a, 2734b, and 2737 of this title.

1964—Pub. L. 88–558 struck out reference to section 2732.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(1) of Pub. L. 88–558 provided that the amendment made by that section is effective two years from Aug. 31, 1964.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 88–558, Aug. 31, 1964, 78 Stat. 767, cited as a credit to this section and in the Effective Date of 1964 Amendment note above, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 857a.

§ 2736. Property loss; personal injury or death: advance payment

(a)(1) In the case of a person who is injured or killed, or whose property is damaged or lost, under circumstances for which the Secretary of a military department is authorized by law to allow a claim, the Secretary of the military department concerned may make a payment to or for the person, or the legal representatives of the person, in advance of the submission of such a claim or, if such a claim is submitted, in advance of the final settlement of the claim. The amount of such a payment may not exceed $100,000.

(2) Payments under this subsection are limited to payments which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(3) The Secretary of a military department may delegate the authority to make payments under this subsection to the Judge Advocate General of an armed force under the jurisdiction of the Secretary. The Secretary may delegate such authority to any other officer or employee under the jurisdiction of the Secretary, but only with respect to the payment of amounts of $25,000 or less.

(4) Payments under this subsection shall be made under regulations prescribed by the Secretary of the military department concerned.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned.

(Added Pub. L. 87–212, § 1(1), Sept. 8, 1961, 75 Stat. 488; amended Pub. L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874; Pub. L. 98–564, § 3, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 100–456, div. A, title VII, § 735(a), Sept. 29, 1988, 102 Stat. 2005.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Under such regulations as the Secretary of a military department may prescribe, payment of an amount not in excess of $10,000 may be made in advance of the submission of a claim to or for any person, or his legal representatives, who was injured or killed, or whose property was damaged or lost, under circumstances for which allowance of a claim is authorized by law. Payments under this subsection are limited to those which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.''

1984—Subsec. (a). Pub. L. 98–564 substituted ''$10,000'' for ''$1,000''.

1968—Pub. L. 90–521 substituted ''advance payment'' for ''incident to aircraft or missile operation'' in section catchline.

Subsec. (a). Pub. L. 90–521 substituted ''under circumstances'' for ''as the result of an accident involving an aircraft or missile under the control of that department''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 735(b) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any claim which would otherwise be payable under section 2733 or 2734 of title 10, United States Code, or under section 715 of title 32, United States Code, and which has not been finally settled on or before the date of the enactment of this Act [Sept. 29, 1988].''

§ 2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law

(a) Under such regulations as the Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) So far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense.

(Added Pub. L. 87–769, § 1(1)(A), Oct. 9, 1962, 76 Stat. 767, § 2736; renumbered § 2737, Pub. L. 89–718, § 21(a), Nov. 2, 1966, 80 Stat. 1118.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2735 of this title.

§ 2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action

(a) AUTHORITY TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces in an amount not more than $100,000 for a loss described in subsection (b).

(b) COVERED LOSSES.—This section applies with respect to a loss of household effects sustained during a move made incident to a change of permanent station when, as determined by the Secretary, the loss was caused by a hostile action incident to war or a warlike action by a military force.

(c) LIMITATION.—The Secretary may provide reimbursement under this section for a loss described in subsection (b) only to the extent that the loss is not reimbursed under insurance or under the authority of another provision of law.

(d) APPLICABILITY OF OTHER AUTHORITIES AND REQUIREMENTS.—Subsections (b), (d), (e), (f), and (g) of section 2733 of this title shall apply to a request for a reimbursement under this section as if the request were a claim against the United States.

(Added Pub. L. 103–337, div. A, title V, § 557(a), Oct. 5, 1994, 108 Stat. 2775.)

EFFECTIVE DATE

Section 557(c) of Pub. L. 103–337 provided that:

''(1) Section 2738 of title 10, United States Code, as added by subsection (a), applies with respect to losses incurred after June 30, 1990.

''(2) In the case of a loss incurred after June 30, 1990, and before the date of the enactment of this Act [Oct. 5, 1994], a request for reimbursement shall be filed with the Secretary of the military department concerned not later than two years after such date of enactment.''

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
2771. Final settlement of accounts: deceased members.
2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home.
2773. Designation, powers, and accountability of deputy disbursing officials.
2774. Claims for overpayment of pay and allowances and of travel and transportation allowances.
2775. Liability of members assigned to military housing.
2776. Use of receipts of public money for current expenditures.
2777. Requisitions for advances and removal of charges outstanding in accounts of advances.
2778. Accounts of the military departments.
2779. Use of funds because of fluctuations in currency exchange rates of foreign countries.
2780. Debt collection.
2781. Availability of appropriations: exchange fees; losses in accounts.
[2782. Repealed.]
2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, § 1182(a)(8)(C), Nov. 30, 1993, 107 Stat. 1771, added item 2783.

1990—Pub. L. 101–510, div. A, title XIV, § 1405(c)(2), title XV, § 1533(a)(4)(B), Nov. 5, 1990, 104 Stat. 1680, 1734, substituted ''Retirement Home'' for ''retirement homes'' in item 2772 and struck out item 2782 ''Unobligated balances withdrawn from availability for obligation: limitations on restoration''.

1989—Pub. L. 101–189, div. A, title III, § 342(a)(2), title XVI, § 1603(a)(2), Nov. 29, 1989, 103 Stat. 1420, 1598, added items 2772 and 2782.

1988—Pub. L. 100–370, § 1(m)(2), July 19, 1988, 102 Stat. 850, added item 2781.

1987—Pub. L. 100–26, § 7(j)(7)(C), Apr. 21, 1987, 101 Stat. 283, substituted ''allowances and of'' for ''allowances, and'' in item 2774.

1986—Pub. L. 99–661, div. A, title XIII, § 1309(b), Nov. 14, 1986, 100 Stat. 3983, added item 2780.

1985—Pub. L. 99–224, § 2(b), Dec. 28, 1985, 99 Stat. 1742, substituted ''and'' for ''other than'' in item 2774.

Pub. L. 99–167, title VIII, § 802(d)(2), Dec. 3, 1985, 99 Stat. 987, substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in item 2775.

1984—Pub. L. 98–407, title VIII, § 801(a)(2), Aug. 28, 1984, 98 Stat. 1518, substituted ''members for damage to housing and related equipment and furnishings'' for ''member for damages to family housing, equipment, and furnishings'' in item 2775.

1982—Pub. L. 97–258, §2(b)(7)(A), (8)(A), Sept. 13, 1982, 96 Stat. 1054, substituted ''Designation, powers, and accountability of deputy disbursing officials'' for ''Accountability for public money: disbursing officers; agent officers'' in item 2773 and added items 2776, 2777, 2778, and 2779.

1980—Pub. L. 96–513, title V, §511(96), Dec. 12, 1980, 94 Stat. 2928, struck out item 2772 ''Withholding pay of officers''.

Pub. L. 96–418, title V, §506(b), Oct. 10, 1980, 94 Stat. 1766, added item 2775.

1972—Pub. L. 92–453, §1(2), Oct. 2, 1972, 86 Stat. 759, added item 2774.

1962—Pub. L. 87–480, §1(1)(B), June 8, 1962, 76 Stat. 94, added item 2773.

CROSS REFERENCES

Particular provisions relating to—

Air Force, see section 9831 et seq. of this title.

Army, see section 4831 et seq. of this title.

§2771. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a deceased member of the armed forces, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform for the uniformed services.

(c) Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the military department concerned or the Department of Transportation, as the case may be. Payment under clause (6) of subsection (a) shall be made—

(1) upon settlement by the General Accounting Office; or

(2) as otherwise authorized by the Comptroller General.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Sept. 2, 1958, Pub. L. 85–861, §1(56), 72 Stat. 1461; July 12, 1960, Pub. L. 86–641, 74 Stat. 473; Nov. 2, 1966, Pub. L. 89–718, §8(a), 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96–513, title V, §511(97), 94 Stat. 2928; Nov. 30, 1993, Pub. L. 103–160, div. A, title XI, §1182(a)(11), 107 Stat. 1771.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	10:868 (less proviso). 34:941a (less proviso).	June 30, 1906, ch. 3914, §1 (last par. under ''State or Territorial Homes for Disabled Soldiers and Sailors''); restated Dec. 7, 1944, ch. 519; restated Feb. 25, 1946, ch. 35, §4, 60 Stat. 30.
2771(b).	10:868 (proviso). 34:941a (proviso).	Feb. 25, 1946, ch. 35, §1, 60 Stat. 30; Aug. 4, 1949, ch. 393, §18, 63 Stat. 560.

In subsections (a) and (b), the words ''General Accounting Office'' are substituted for the words ''accounting officers'', for clarity.

In subsection (a), the word ''member'' is substituted for the words ''officers or enlisted persons'', in 10:868 and 34:941a. The words ''his legal representative'' are substituted for the words ''a duly appointed legal representative of the estate'', since an estate, being property and not an entity, has no representative. The words ''duly appointed'' are omitted as surplusage. The words ''highest on the following list'' are substituted for the words ''following order of precedence'', in 10:868 and 34:941a. Clauses (1)–(4) are substituted for the words between the first and second colons of 10:868 and 34:941a. The words ''Surviving spouse'' are substituted for the words ''widow or widower'' after the words ''First, to''.

In subsection (b), the words ''That this section shall not be so construed as to prevent'', ''or persons'', and ''actually'', in 10:868 and 34:941a, are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§1–3, 4 (less proviso), 5 (first sentence), 69 Stat. 295, 296.
2771(b).	37:364 (less proviso).	
2771(c)	37:363 (less last sentence).	
2771(d)	37:363 (last sentence).	

In subsection (a), the definition of the term ''Department'', in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term ''uniformed services'', in 37:361, is omitted as covered by the word ''member'' in this revised section and by sections 3 and 4 of the Act enacting this revised section. Clauses (1)–(6) are substituted for the last 5 clauses of 37:362. The words ''regulations to be prescribed by the Secretary concerned'' are substituted for the words ''regulations of the Department concerned'', since the ''Department'', as such, cannot issue regulations.

In subsection (a)(2), the words ''surviving spouse'' are substituted for the words ''widow or widower''. As defined in section 101(32), ''spouse'' includes a widower.

In subsection (b), the words ''are subject to'' are substituted for the words ''shall be made under''.

In subsection (c), the word ''Under'' is substituted for the words ''Subject to''. The words ''rules and'' are omitted as surplusage.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, §1182(a)(11)(A), struck out ''who dies after December 31, 1955'' after ''armed forces'' in introductory provisions.

Subsec. (b). Pub. L. 103–160, §1182(a)(11)(B), substituted ''for the uniformed services'' for ''for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service''.

1980—Subsec. (b). Pub. L. 96–513, §511(97)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsec. (c). Pub. L. 96–513, § 511(97)(B), substituted ''Department of Transportation'' for ''Department of the Treasury''.

1966—Subsec. (b). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1960—Subsec. (c). Pub. L. 86–641 substituted provisions requiring payment under clause (6) of subsection (a) to be made upon settlement by the General Accounting Office or as otherwise authorized by the Comptroller General for provisions which permitted payments under clauses (2) to (6) of subsection (a) to be made only after settlement by the General Accounting Office.

1958—Subsec. (a). Pub. L. 85–861 amended subsec. (a) generally to restrict application of section to members of the armed forces who die after Dec. 31, 1955, and to permit payment to the designated beneficiaries, surviving spouse, children and their descendants, and to parents before payment to the legal representative.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designations and changes of designation of beneficiaries for provisions which authorized reimbursement of funeral expenses.

Subsecs. (c), (d). Pub. L. 85–861 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

FINAL SETTLEMENT OF ACCOUNTS OF MEMBERS WHO DIED BEFORE JANUARY 1, 1960

Section 29 of Pub. L. 85–861 provided that:

''(a) In the settlement of the accounts of a member of the Army, Navy, Air Force, or Marine Corps who died before January 1, 1956, if a demand is not made by his legal representative, the General Accounting Office may allow any amount due, to the person highest on the following list living on the date of settlement:

''(1) Surviving spouse.

''(2) Children and their issue, per stirpes.

''(3) Father and mother in equal parts or, if either is dead, the survivor.

''(4) Brothers and sisters, and their children, per stirpes.

''(b) Reimbursement for funeral expenses may be made from the amount due the decedent's estate, if the person who paid the expenses presents a claim for them before settlement by the General Accounting Office.''

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Section 31 of Pub. L. 85–861 provided that: ''The designation of a beneficiary made for the purposes of any six months' death gratuity, including the designation of a person whose right to the gratuity does not depend upon that designation, and received in the military department concerned, the Department of the Treasury, the Department of Commerce, or the Department of Health, Education, and Welfare, as the case may be, before January 1, 1956, is considered as the designation of a beneficiary for the purposes of section 2771 of title 10, United States Code [this section], section 714 of title 32, United States Code, and sections 3 and 4 of this Act [amending section 857a of Title 33, and section 213a of Title 42], in the absence of a designation under one of those sections, unless the member making the designation was missing, missing in action, in the hands of a hostile force, or interned in a foreign country any time after July 11, 1955, and before January 1, 1956.''

CROSS REFERENCES

Payment of claims incident to correction of military records, see section 1552 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1552 of this title; title 5 section 8316; title 24 section 420; title 32 section 714; title 33 section 857a; title 37 section 501; title 42 section 213a.

§ 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

(a) DEPOSIT REQUIRED.—The Secretary of the military department concerned shall deposit in the Armed Forces Retirement Home Trust Fund a percentage (determined under subsection (b)) of the following amounts:

(1) The amount of forfeitures and fines adjudged against an enlisted member, warrant officer, or limited duty officer of the armed forces by sentence of a court martial or under authority of section 815 of this title (article 15) over and above any amount that may be due from the member, warrant officer, or limited duty officer for the reimbursement of the United States or any individual.

(2) The amount of forfeitures on account of the desertion of an enlisted member, warrant officer, or limited duty officer of the armed forces.

(b) DETERMINATION OF PERCENTAGE.—The Armed Forces Retirement Home Board shall determine, on the basis of the financial needs of the Armed Forces Retirement Home, the percentage of the amounts referred to in subsection (a) to be deposited in the trust fund referred to in such subsection.

(c) APPLICATION TO COAST GUARD.—In this section, the term ''armed forces'' does not include the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–189, div. A, title III, § 342(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XV, § 1533(a)(3), (4)(A), Nov. 5, 1990, 104 Stat. 1733.)

PRIOR PROVISIONS

A prior section 2772, act Aug. 10, 1956, ch. 1041, 70A Stat. 156, authorized withholding of pay of officers of the Army, Navy, Air Force, or Marine Corps, and is covered by section 1007 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, § 14c(3), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

AMENDMENTS

1990—Pub. L. 101–510, § 1533(a)(4)(A), substituted ''Retirement Home'' for ''retirement homes'' in section catchline and amended text generally, substituting subsecs. (a) to (c) relating to shares of fines and forfeitures to benefit the Armed Forces Retirement Home for former subsecs. (a) and (b) relating to shares of fines and forfeitures to benefit the Soldiers' Home and the Naval Home.

Pub. L. 101–510, § 1533(a)(3), inserted ''and forfeitures'' after ''fines'' in subsecs. (a)(1)(A) and (b)(1)(A) and substituted '', warrant officer, or limited duty officer'' for ''or warrant officer'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1533(a)(3) of Pub. L. 101–510 provided that the amendment by that section is effective Nov. 5, 1990.

Amendment by section 1533(a)(4)(A) of Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE

Section 342(b) of Pub. L. 101–189 provided that:

''(1) Subsection (a) of section 2772 of such title [10 U.S.C. 2772(a)], as added by subsection (a), shall apply with respect to fines and forfeitures adjudged after the date of the enactment of this Act [Nov. 29, 1989].

''(2) Subsection (b) of such section shall apply with respect to fines and forfeitures adjudged after May 31, 1990.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 24 section 419.

§2773. Designation, powers, and accountability of deputy disbursing officials

(a)(1) With the approval of a Secretary of a military department when the Secretary considers it necessary, a disbursing official of the military department may designate a deputy disbursing official—

(A) to make payments as the agent of the disbursing official;

(B) to sign checks drawn on disbursing accounts of the Secretary of the Treasury; and

(C) to carry out other duties required under law.

(2) The penalties for misconduct that apply to a disbursing official apply to a deputy disbursing official designated under this subsection.

(b)(1) If a disbursing official of any military department dies, becomes disabled, or is separated from office, a deputy disbursing official may continue the accounts and payments in the name of the former disbursing official until the last day of the 2d month after the month in which the death, disability, or separation occurs. The accounts and payments shall be allowed, audited, and settled as provided by law. The Secretary of the Treasury shall honor checks signed in the name of the former disbursing official in the same way as if the former disbursing official had continued in office.

(2) The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official, is liable for the actions of the deputy disbursing official under this subsection.

(Added Pub. L. 87–480, §1(1)(A), June 8, 1962, 76 Stat. 94; amended Pub. L. 97–258, §2(b)(7)(B), Sept. 13, 1982, 96 Stat. 1054.)

HISTORICAL AND REVISION NOTES
1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2773(a)	10:2773. 31:103a.	July 3, 1926, ch. 775, 44 Stat. 888; June 6, 1972, Pub. L. 92–310, §231(bb), 86 Stat. 212.
2773(b)	31:103b.	July 31, 1953, ch. 300, 67 Stat. 296; June 6, 1972, Pub. L. 92–310, §231(ff), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officer'' for consistency with other titles of the United States Code. The words ''Secretary of the Treasury'' are substituted for ''Treasurer of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 10:2773 is omitted as being superseded by 31:103a and 103b.

In subsection (a)(1), before clause (A), the words ''With the approval of a Secretary of a military department when the Secretary considers it necessary'' are substituted for ''When, in the opinion of the Secretary of the Army, Navy, or Air Force, the exigencies of the service so require . . . with the approval of the head of their executive department'' in 31:103a because of 10:101(7), to eliminate unnecessary words, and for consistency. The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). The words ''deputy disbursing official'' are substituted for ''deputies'' for clarity. In clause (A), the words ''to make payments'' are substituted for ''for the purpose of having them make disbursements'' to eliminate unnecessary words. In clause (C), the words ''to be performed by such disbursing officers'' are omitted as unnecessary.

In subsection (a)(2), the words ''deputy disbursing official'' are substituted for ''agent officer'' for clarity and consistency.

In subsection (b)(1), the word ''disabled'' is substituted for ''incapacity'' for consistency in the title. The word ''until'' is substituted for ''for a period of time not to extend beyond'' to eliminate unnecessary words.

In subsection (b)(2), the words ''The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official'' are substituted for ''The former disbursing officer or his estate . . . but the deputy disbursing officer shall be responsible therefor'' for clarity and because of the restatement. The word ''liable'' is substituted for ''subject to any legal liability or penalty'' to eliminate unnecessary words. The word ''actions'' is substituted for ''official acts and defaults''. The words ''in the name or in the place of the former disbursing officer'' are omitted as unnecessary.

AMENDMENTS

1982—Pub. L. 97–258 substituted provisions authorizing a disbursing official of a military department to designate a deputy disbursing official with the same duties and penalties for misconduct as those of the disbursing official and allowing a deputy disbursing official to continue the accounts and payments in the name of a former disbursing official for two months after the death, disability, or separation of the former disbursing official for provisions authorizing any officer of an armed force accountable for public money to entrust it to another officer of an armed force to make disbursement as his agent, with both officers pecuniarily responsible to the United States for that money.

§2774. Claims for overpayment of pay and allowances and of travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Comptroller General; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $1,500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

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

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

(Added Pub. L. 92–453, § 1(1), Oct. 2, 1972, 86 Stat. 758; amended Pub. L. 96–513, title V, § 511(98), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 99–224, § 2(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 100–26, § 7(j)(7)(A), (B), Apr. 21, 1987, 101 Stat. 283; Pub. L. 102–190, div. A, title VI, § 657(b), Dec. 5, 1991, 105 Stat. 1393.)

AMENDMENTS

1991—Subsec. (a)(2)(A). Pub. L. 102–190 substituted ''$1,500'' for ''$500''.

1987—Pub. L. 100–26, § 7(j)(7)(A), substituted ''allowances and of'' for ''allowances, and'' in section catchline.

Subsec. (a). Pub. L. 100–26, § 7(j)(7)(B), struck out ''as defined in section 101(3) of title 37,'' after ''uniformed services,''.

1985—Pub. L. 99–224, § 2(a)(1), substituted ''and'' for ''other than'' in section catchline.

Subsec. (a). Pub. L. 99–224, § 2(a)(2), substituted ''made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances'' for '', other than travel and transportation allowances, made before or after October 2, 1972''.

Subsec. (b)(2). Pub. L. 99–224, § 2(a)(3), struck out ''of pay or allowances, other than travel and transportation allowances,'' after ''payment''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''October 2, 1972'' for ''the effective date of this section''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99–224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CANCELLATION OF DEBTS UP TO $2,500 OF UNIFORMED SERVICE MEMBERS INCURRED IN CONNECTION WITH OPERATION DESERT SHIELD/STORM

Pub. L. 103–335, title VIII, § 8060, Sept. 30, 1994, 108 Stat. 2633, provided that: ''Notwithstanding any other provision of law, the Secretary of Defense may, when he considers it in the best interest of the United States, cancel any part of an indebtedness, up to $2,500, that is or was owed to the United States by a member or former member of a uniformed service if such indebtedness, as determined by the Secretary, was incurred in connection with Operation Desert Shield/Storm: *Provided*, That the amount of an indebtedness previously paid by a member or former member and cancelled under this section shall be refunded to the member.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, § 8071, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, § 9100, Oct. 6, 1992, 106 Stat. 1926.

Pub. L. 102–172, title VIII, § 8138, Nov. 26, 1991, 105 Stat. 1212.

§ 2775. Liability of members assigned to military housing

(a)(1) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personnel housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) the damage or loss was caused by the abuse or negligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

(2) A member of the armed forces—

(A) who is assigned or provided a family housing unit; and

(B) who fails to clean satisfactorily that housing unit (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) upon termination of the assignment or provision of that housing unit,

shall be liable to the United States for the cost of cleaning made necessary as a result of that failure.

(b) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may establish limitations on liability under this section, including (in the case of liability under subsection (a)(1)) different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

(c)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of any repair or replacement made necessary as the result of any abuse or negligence referred to in subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2), for which the member is liable. Regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means.

(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations prescribed under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

(d) Amounts received under this section shall be credited to the family housing operations and maintenance account, in the case of damage to a family housing unit (or the equipment or furnishings of a family housing unit) or failure to clean satisfactorily a family housing unit, or to the operations and maintenance account, in the case of damage to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit), of the military department or defense agency concerned, or the operating expenses account of the Coast Guard, as appropriate. Amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in those accounts.

(e) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include—

(1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence for which a member is liable under subsection (a)(1);

(2) regulations for determining the cost of cleaning made necessary as a result of the failure to clean satisfactorily for which a member is liable under subsection (a)(2); and

(3) provisions for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.

(Added Pub. L. 96–418, title V, §506(a), Oct. 10, 1980, 94 Stat. 1765; amended Pub. L. 97–214, §10(a)(6), July 12, 1982, 96 Stat. 175; Pub. L. 98–407, title VIII, §801(a)(1), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 99–167, title VIII, §802(a)–(d)(1), Dec. 3, 1985, 99 Stat. 986; Pub. L. 99–661, div. A, title XIII, §1343(a)(19), Nov. 14, 1986, 100 Stat. 3993.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–661, §1343(a)(19)(A), substituted "(as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) the" for "it is determined, under regulations prescribed by the Secretary of Defense and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, that the".

Subsec. (b). Pub. L. 99–661, §1343(a)(19)(B), inserted a comma after "Secretary of Defense", substituted "with respect to the Coast Guard when it" for "when the Coast Guard", and inserted a comma after "Navy".

Subsec. (e). Pub. L. 99–661, §1343(a)(19)(C), substituted "with respect to the Coast Guard when it" for "when the Coast Guard".

1985—Pub. L. 99–167, §802(d)(1), substituted "assigned to military housing" for "for damage to housing and related equipment and furnishings" in section catchline.

Subsec. (a). Pub. L. 99–167, §802(a), (b)(1), designated existing provisions as par. (1), and in par. (1) as so designated, inserted "and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy", and added par. (2).

Subsec. (b). Pub. L. 99–167, §802(b)(1), (c)(1), inserted "and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy" and "(in the case of liability under subsection (a)(1))".

Subsec. (c)(1). Pub. L. 99–167, §802(c)(2), substituted "subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2)," for "subsection (a)".

Subsec. (d). Pub. L. 99–167, §802(b)(2), (c)(3), inserted "or failure to clean satisfactorily a family housing unit" and ", or the operating expenses account of the Coast Guard, as appropriate".

Subsec. (e). Pub. L. 99–167, §802(c)(4), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The Secretary of Defense shall prescribe regulations to carry out the provisions of this section, including (1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence referred to in subsection (a), and (2) regulations providing for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section."

1984—Pub. L. 98–407 substituted "Liability of members for damage to housing and related equipment and furnishings" for "Liability of member for damages to family housing, equipment, and furnishings" in section catchline.

Subsec. (a). Pub. L. 98–407 amended subsec. (a) generally, inserting references to unaccompanied personnel housing units, and expanding liability of members of the Armed Forces to include damages caused by the abuse or negligence of a guest of the member or of a dependent of the member.

Subsec. (b). Pub. L. 98–407 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98–407 redesignated former subsec. (b) as (c), in subsec. (c)(1) as so redesignated substituted reference to any abuse or negligence for which the member is liable for reference to any abuse or negligence on the part of such member or any dependent of such member, inserted provision that regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means, and in subsec. (c)(2), as so redesignated, substituted reference to regulations prescribed under this section for reference to regulations issued under this section. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–407 redesignated former subsec. (c) as (d) and substituted provisions requiring that amounts received under this section be credited either to the family housing operations and maintenance account of the department or agency concerned, (in the case of damage to family housing or equipment or furnishings therein) or the operations and maintenance account of the department or agency concerned (in the case of damage to an unaccompanied personnel housing

unit or equipment or furnishings therein) for provisions that amounts deducted from members' pay under this section had to be credited to the Department of Defense Military Family Housing Management Account provided for in section 2831 of this title. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–407 redesignated former subsec. (d) as (e)(1), substituted reference to abuse or negligence referred to in subsec. (a) for reference to abuse or negligence on the part of a member or dependent of a member, and added par. (2).

1982—Subsec. (c). Pub. L. 97–214, § 10(a)(6), substituted ''Military Family Housing Management Account provided for in section 2831 of this title'' for ''family housing management account established under section 501 of Public Law 87–554 (76 Stat. 236; 42 U.S.C. 1594a–1)''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 608 of title VI of Pub. L. 96–418, set out as an Effective Date of 1980 Amendment note under section 2675 of this title.

PROMULGATION OF REGULATIONS AND APPLICABILITY OF 1984 AMENDMENTS

Section 801(b) of Pub. L. 98–407 provided that:

''(1) Regulations shall be prescribed under subsection (e) of section 2775 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Aug. 28, 1984]. That section shall apply with respect to the liability of a member under such section for damage or loss to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit) or for damage or loss caused by a guest of the member or of a dependent of the member to a family housing unit (or the equipment or furnishings of a family housing unit) only in the case of damage or loss caused on or after the date that such regulations take effect.

''(2) The authority of the Secretary of Defense under subsection (b) of such section is applicable to any claim of the United States under such section, whether such claim arose before, on, or after the date of the enactment of this Act [Aug. 28, 1984].''

§ 2776. Use of receipts of public money for current expenditures

Without deposit to the credit of the Secretary of the Treasury and without withdrawal on money requisitions, a disbursing official of the Department of Defense may use receipts of public money charged in the disbursing official's accounts (except receipts to be credited to river, harbor, and flood control appropriations) for current expenditures, with necessary bookkeeping adjustments being made.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2776	31:493a.	Aug. 1, 1953, ch. 305, § 611, 67 Stat. 350.

The words ''disbursing official'' are substituted for ''officer . . . on disbursing duty'' for consistency with other titles of the United States Code. The words ''On and after August 1, 1953'' are omitted as executed. The words ''Secretary of the Treasury'' are substituted for ''Treasury of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated in section 321 of the revised title contained in section 1 of the bill. The words ''from sales or other sources'' are omitted as surplus. The words ''with'' and ''being'' are added because of the restatement. The words ''of appropriations, funds, and accounts to be . . . in the settlement of their disbursing accounts'' are omitted as unnecessary.

PRIOR PROVISIONS

Act Aug. 1, 1953, cited as the source of this section in the Historical and Revision Notes above, is known as the Department of Defense Appropriation Act, 1954. Similar provisions were contained in the following appropriation acts:

July 10, 1952, ch. 630, title VI, § 613, 66 Stat. 532.
Oct. 18, 1951, ch. 512, title VI, § 613, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 615, 64 Stat. 753.
Oct. 29, 1949, ch. 787, title VI, § 618, 63 Stat. 1020.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 551.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 3, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.
June 30, 1941, ch. 262, § 1, 55 Stat. 369.
June 13, 1940, ch. 343, § 1, 54 Stat. 355.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 597.
June 11, 1938, ch. 347, § 1, 52 Stat. 646.
July 1, 1937, ch. 423, § 1, 50 Stat. 446.

§ 2777. Requisitions for advances and removal of charges outstanding in accounts of advances

(a) The Secretary of a military department may issue to a disbursing official or agent of the department a requisition for an advance of not more than the total appropriation for the department. The amount advanced shall be—

(1) under an ''account of advances'' for the department;

(2) on a proper voucher;

(3) only for obligations payable under specific appropriations;

(4) charged to, and within the limits of, each specific appropriation; and

(5) returned to the account of advances.

(b) A charge outstanding in an account of advances of a military department shall be removed by crediting the account of advances of the department and deducting the amount of the charge from an appropriation made available for advances to the department when—

(1) relief has been granted or may be granted later to a disbursing official or agent of the department operating under an account of advances and under a law having no provision for removing charges outstanding in an account of advances; or

(2) the charge has been—

(A) outstanding in the account of advances of the department for 2 complete fiscal years; and

(B) certified by the head of the department to the Comptroller General as uncollectable.

(c) Subsection (b) does not affect the financial liability of a disbursing official or agent.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055; amended Pub. L. 98–525, title XIV, § 1405(43), Oct. 19, 1984, 98 Stat. 2625.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2777(a)	31:536, 537.	June 5, 1920, ch. 240 (1st, 2d pars. under heading ''Advances to Disbursing Officers''), 41 Stat. 975.
	31:539, 540.	June 19, 1878, ch. 312, §§1, 2, 20 Stat. 167.
2777(b), (c).	31:95b (related to Army, Navy, Air Force).	June 4, 1954, ch. 264, §1 (related to Army, Navy, Air Force), 68 Stat. 175; June 6, 1972, Pub. L. 92–310, §231(gg), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officers'' for consistency with other titles of the United States Code.

In subsection (a), before clause (1), the words ''Secretary of a military department'' are substituted for ''Secretary of the Army'' in 31:536 and for ''Secretary of the Navy'' in 31:539 because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (1), the word ''General'' in 31:539 is omitted as surplus. In clause (3), the words ''and 'Pay of the Navy' shall be used only for its legitimate purpose, as provided by law'' are omitted as unnecessary. In clause (5), the words ''by pay and counterwarrant'' in 31:537 and 540 are omitted as unnecessary.

In subsection (b), before clause (1), the word ''appropriate'' is omitted as surplus. The words ''deducting the amount of the charge from'' are substituted for ''debiting'' for clarity. In clause (2)(B), the word ''concerned'' is omitted as surplus.

In subsection (c), the words ''in any way'' and ''of the United States'' are omitted as surplus.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–525 struck out ''of this section'' after ''Subsection (b)''.

§2778. Accounts of the military departments

The Comptroller General shall—

(1) maintain all accounts of—

(A) receipts and expenditures of public money in the military departments; and

(B) debts due the United States on moneys advanced for the department;

(2) preserve settled accounts, vouchers, and certificates;

(3) record all requisitions drawn by the Secretary of the department;

(4) each year on the first Monday in November, report to the Secretary of the Treasury on the application of money appropriated for the military departments; and

(5) report on the accounts of the military departments as the Secretary of the department requires.

(Added Pub. L. 97–258, §2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2778	31:44 (1st sentence).	June 10, 1921, ch. 18, §304 (1st par. 1st sentence), 42 Stat. 24.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
	31:103.	R.S. §283; July 31, 1894, ch. 174, §10 (3d sentence words after semicolon related to §283), 28 Stat. 208.

In the section, before clause (1), the words ''Comptroller General'' are substituted for ''General Accounting Office'' for consistency. In clause (1)(A), the words ''regard to'' are omitted as surplus. The words ''military departments'' are substituted for ''Departments of the Army, Navy, and Air Force'' because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (2), the word ''settled'' is substituted for ''finally adjusted'' for consistency in the revised title and with other titles of the United States Code. In clause (4), the words ''deem necessary and'' are omitted as surplus.

§2779. Use of funds because of fluctuations in currency exchange rates of foreign countries

(a)(1) Funds transferred from the appropriation ''Foreign Currency Fluctuations, Defense'' may be transferred back to the appropriation—

(A) when the funds are not needed to pay obligations incurred because of fluctuations in currency exchange rates of foreign countries in the appropriation to which the funds were originally transferred; and

(B) because of subsequent favorable fluctuations in the rates or because other funds are, or become, available to pay the obligations.

(2) A transfer back to the Foreign Currency Fluctuations, Defense appropriation may not be made after the end of the 2d fiscal year after the fiscal year that the appropriation to which the funds were originally transferred is available for obligation.

(b)(1) One hundred million dollars, plus $25,000,000 from Family Housing, Defense, are appropriated to the Secretary of Defense, to remain available until spent. The appropriation is available only to provide funds to eliminate losses in military construction or expenses of family housing for the Department of Defense caused by fluctuations in currency exchange rates of foreign countries that changed after a budget request was submitted to Congress.

(2) Funds provided under this subsection are merged with and are available for the same purpose and for the same time period as the appropriation to which they are applied. An authorization or limitation limiting the amount that may be obligated or spent is increased to the extent necessary to reflect fluctuations in exchange rates from those used in preparing the budget submission.

(3) An obligation payable in the currency of a foreign country may be recorded as an obligation based on exchange rates used in preparing a budget submission. A change reflecting fluctuations in the exchange rate may be recorded as a disbursement is made.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1056; amended Pub. L. 101–510, div. A, title XIII, § 1301(15), Nov. 5, 1990, 104 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2779(a)	31:628–2.	July 25, 1979, Pub. L. 96–38, § 100 (last par. under heading ''General Provisions''), 93 Stat. 100.
2779(b)	31:628–3.	Nov. 30, 1979, Pub. L. 96–130, § 100 (par. under heading ''Foreign Currency Fluctuation, Construction, Defense''), 93 Stat. 1019.

In subsection (a)(1), before clause (A), the words ''during the current fiscal year or on and after July 25, 1979'' are omitted as executed. The words ''from an appropriation to which they were transferred'' are omitted as surplus. In clause (A), the words ''of foreign countries'' are added for consistency.

In subsection (a)(2), the words ''back to the Foreign Currency Fluctuations, Defense appropriation'' are substituted for ''authorized by this provision'' for clarity.

In subsection (b)(1), the words ''the sum of'', ''which shall be derived'', and ''to appropriations and funds'' are omitted as surplus. The word ''only'' is added for clarity. The words ''for those appropriations or funds'' are omitted as surplus. The words ''available during fiscal year 1980, or thereafter'' are omitted as executed. The words ''Department of Defense'' are substituted for ''military departments and Defense agencies'' because of 10:101(5).

In subsection (b)(2), the words ''or fund'' are omitted as surplus. The words ''now or on and after November 30, 1979'' are omitted as executed. The words ''contained within appropriations or other provisions of law'', ''hereby'', and ''applicable'' are omitted as surplus.

In subsection (b)(3), the words ''contracts or other . . . entered into'' are omitted as surplus.

AMENDMENTS

1990—Subsec. (b)(4). Pub. L. 101–510 struck out par. (4) which read as follows: ''The Secretary each year shall report to Congress on funds made available under this subsection.''

§ 2780. Debt collection

(a)(1) Subject to paragraph (2), the Secretary of Defense shall enter into one or more contracts with a person for collection services to recover indebtedness owed to the United States (arising out of activities related to Department of Defense) that is delinquent by more than three months.

(2) The authority of the Secretary to enter into a contract under this section for any fiscal year is subject to the availability of appropriations.

(3) Any such contract shall provide that the person submit to the Secretary a status report on the person's success in collecting such debts at least once each six months. Section 3718 of title 31 shall apply to any such contract, to the extent not inconsistent with this subsection.

(b) The Secretary shall disclose to consumer reporting agencies, in accordance with paragraph (1) of section 3711(f) of title 31, information concerning any debt described in subsection (a) of more than $100 that is delinquent by more than 31 days.

(Added Pub. L. 99–661, div. A, title XIII, § 1309(a), Nov. 14, 1986, 100 Stat. 3982.)

CONTRACTS FOR RECOVERY OF INDEBTEDNESS

Pub. L. 101–165, title IX, § 9019, Nov. 21, 1989, 103 Stat. 1133, provided that: ''During the current fiscal year and hereafter, the Department of Defense may enter into contracts to recover indebtedness to the United States pursuant to section 3718 of title 31, United States Code.''

§ 2781. Availability of appropriations: exchange fees; losses in accounts

Amounts appropriated to the Department of Defense may be used for—

(1) exchange fees; and

(2) losses in the accounts of disbursing officials and agents in accordance with law.

(Added Pub. L. 100–370, § 1(m)(1), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(c)], Dec. 19, 1985, 99 Stat. 1185, 1203.

[§ 2782. Repealed. Pub. L. 101–510, div. A, title XIV, § 1405(c)(1), Nov. 5, 1990, 104 Stat. 1680]

Section, added Pub. L. 101–189, div. A, title XVI, § 1603(a)(1), Nov. 29, 1989, 103 Stat. 1597, related to limits on restoration of unobligated balances withdrawn from availability for obligation.

§ 2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds

(a) REGULATION OF MANAGEMENT AND USE OF NONAPPROPRIATED FUNDS.—The Secretary of Defense shall prescribe regulations governing—

(1) the purposes for which nonappropriated funds of a nonappropriated fund instrumentality of the United States within the Department of Defense may be expended; and

(2) the financial management of such funds to prevent waste, loss, or unauthorized use.

(b) PENALTIES FOR VIOLATIONS.—(1) A civilian employee of the Department of Defense who is paid from nonappropriated funds and who commits a substantial violation of the regulations prescribed under subsection (a) shall be subject to the same penalties as are provided by law for misuse of appropriations by a civilian employee of the Department of Defense paid from appropriated funds. The Secretary of Defense shall prescribe regulations to carry out this paragraph.

(2) The Secretary shall provide in regulations that a violation of the regulations prescribed under subsection (a) by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(c) NOTIFICATION OF VIOLATIONS.—(1) A civilian employee of the Department of Defense (whether paid from nonappropriated funds or from appropriated funds), and a member of the armed forces, whose duties include the obligation of nonappropriated funds, shall notify the Secretary of Defense of information which the person reasonably believes evidences—

(A) a violation by another person of any law, rule, or regulation regarding the management of such funds; or

(B) other mismanagement or gross waste of such funds.

(2) The Secretary of Defense shall designate civilian employees of the Department of Defense or members of the armed forces to receive a notification described in paragraph (1) and ensure the prompt investigation of the validity of information provided in the notification.

(3) The Secretary shall prescribe regulations to protect the confidentiality of a person making a notification under paragraph (1).

(Added Pub. L. 102–484, div. A, title III, §362(a), Oct. 23, 1992, 106 Stat. 2379, §2490a; renumbered §2783 and amended Pub. L. 103–160, div. A, title XI, §1182(a)(8)(A), Nov. 30, 1993, 107 Stat. 1771.)

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 2490a of this title as this section.

Subsec. (b)(2). Pub. L. 103–160, §1182(a)(8)(A)(i), substituted ''chapter 47 of this title'' for ''chapter 47 of title 10, United States Code'', ''Justice) is'' for ''Justice), is'', and ''section 892 of this title'' for ''section 892 of such title''.

Subsec. (c)(1). Pub. L. 103–160, §1182(a)(8)(A)(ii), substituted ''armed forces'' for ''Armed Forces''.

STANDARDIZATION OF CERTAIN PROGRAMS AND ACTIVITIES OF MILITARY EXCHANGES

Section 361 of Pub. L. 102–484 provided that:

''(a) STANDARDIZATION OF EXCHANGES.—The Secretary of Defense shall standardize among the military departments the following programs and activities of the military exchanges of the military departments:

''(1) Accounting (including account titles and item descriptions).

''(2) Financial reporting formats.

''(3) Automatic data processing and telecommunications data in order to facilitate the transfer of information among military exchanges.

''(b) TIME AND MANNER.—The standardization of programs and activities required by subsection (a) shall be completed not later than March 31, 1994, and shall be carried out in the most efficient manner practicable.

''(c) REPORT.—Not later than March 31, 1993, the Secretary of Defense shall submit to the Congress a report on other programs and activities of the military exchanges, if any, that the Secretary determines can be economically and efficiently managed through standardization or consolidation under a single nonappropriated fund instrumentality.''

CHAPTER 167—DEFENSE MAPPING AGENCY

Sec.
2791. Establishment and duties.
2792. Maps, charts, and books.
2793. Pilot charts.
2794. Prices of maps, charts, and navigational publications.
2795. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations.
2796. Maps, charts, and geodetic data: public availability; exceptions.
2797. Unauthorized use of Defense Mapping Agency name, initials, or seal.
2798. Civil actions barred.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title X, §1074(c), Oct. 5, 1994, 108 Stat. 2861, added items 2797 and 2798.

1991—Pub. L. 102–88, title V, §502(a)(2), Aug. 14, 1991, 105 Stat. 436, added item 2796.

1986—Pub. L. 99–569, title VI, §601(b), Oct. 27, 1986, 100 Stat. 3202, added item 2795.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 14 section 82.

§2791. Establishment and duties

The Defense Mapping Agency is an agency of the Department of Defense. The Defense Mapping Agency shall improve means of navigating vessels of the Navy and the merchant marine by providing, under the authority of the Secretary of Defense, accurate and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally.

(Added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2791	10:7391.	

The first sentence is substituted for ''There is attached to the Office of the Chief of Naval Operations a United States Naval Oceanographic Office'' to reflect the transfer of functions of the Naval Oceanographic Office to the Secretary of Defense by Department of Defense Reorganization Order of March 28, 1972, and the further delegation to the Defense Mapping Agency of the responsibilities assigned the Secretary of Defense under the source provision. The words ''Secretary of Defense'' are substituted for ''Secretary of the Navy'' for consistency.

§2792. Maps, charts, and books

The Secretary of Defense may—

(1) have the Defense Mapping Agency prepare maps, charts, and nautical books required in navigation and have those materials published and furnished to navigators; and

(2) buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.

(Added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2792	10:7392.	

In the section, the words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The words ''under such regulations as he prescribes'' are omitted as unnecessary.

§2793. Pilot charts

(a) There shall be conspicuously printed on pilot charts prepared in the Defense Mapping Agency the following: ''Prepared from data furnished by the Defense Mapping Agency of the Department of Defense and by the Department of Commerce, and published at the Defense Mapping Agency under the authority of the Secretary of Defense''.

(b) The Secretary of Commerce shall furnish to the Defense Mapping Agency, as quickly as possible, all meteorological information received by the Secretary that is necessary for,

and of the character used in, preparing pilot charts.

(Added Pub. L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2793	10:7393.	

The words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The words ''Secretary of Commerce'' are substituted for ''Weather Bureau of the Department of Commerce'' to reflect the transfer of functions from the Weather Bureau to the Secretary of Commerce under Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318). The word ''quickly'' is substituted for ''expeditiously'' for consistency in title 10.

§ 2794. Prices of maps, charts, and navigational publications

All maps, charts, and other publications offered for sale by the Defense Mapping Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.

(Added Pub. L. 97–295, § 1(50)(C), Oct. 12, 1982, 96 Stat. 1299.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2794	10:7394.	

The words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The word ''prescribed'' is substituted for ''determined'' for consistency in title 10. The last sentence, which provided that money from sales be covered into the Treasury, is omitted because of 31:3302.

§ 2795. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations

The Secretary of Defense may authorize the Defense Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

(Added Pub. L. 99–569, title VI, § 601(a), Oct. 27, 1986, 100 Stat. 3202.)

§ 2796. Maps, charts, and geodetic data: public availability; exceptions

(a) The Defense Mapping Agency shall offer for sale maps and charts at scales of 1:500,000 and smaller, except those withheld in accordance with subsection (b) or those specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order.

(b)(1) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any geodetic product in the possession of, or under the control of, the Department of Defense—

(A) that was obtained or produced, or that contains information that was provided, pursuant to an international agreement that restricts disclosure of such product or information to government officials of the agreeing parties or that restricts use of such product or information to government purposes only;

(B) that contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods used to obtain source material for production of the geodetic product; or

(C) that contains information that the Director of the Defense Mapping Agency has determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations or reveal military operational or contingency plans.

(2) In this subsection, the term ''geodetic product'' means any map, chart, geodetic data, or related product.

(c)(1) Regulations to implement this section (including any amendments to such regulations) shall be published in the Federal Register for public comment for a period of not less than 30 days before they take effect.

(2) Regulations under this section shall address the conditions under which release of geodetic products authorized under subsection (b) to be withheld from public disclosure would be appropriate—

(A) in the case of allies of the United States; and

(B) in the case of qualified United States contractors (including contractors that are small business concerns) who need such products for use in the performance of contracts with the United States.

(Added Pub. L. 102–88, title V, § 502(a)(1), Aug. 14, 1991, 105 Stat. 435; amended Pub. L. 103–359, title V, § 502, Oct. 14, 1994, 108 Stat. 3430.)

AMENDMENTS

1994—Subsec. (b)(1)(C). Pub. L. 103–359 inserted ''jeopardize or interfere with ongoing military or intelligence operations or'' after ''disclosed,''.

REGULATIONS

Section 502(b) of Pub. L. 102–88 provided that: ''Regulations to implement section 2796 of title 10, United States Code, as added by subsection (a), shall be published in the Federal Register for public comment in accordance with subsection (c) of that section not later than 90 days after the date of the enactment of this Act [Aug. 14, 1991].''

§ 2797. Unauthorized use of Defense Mapping Agency name, initials, or seal

(a) No person may, except with the written permission of the Secretary of Defense, knowingly use the words ''Defense Mapping Agency'', the initials ''DMA'', the seal of the Defense Mapping Agency, or any colorable imitation of such words, initials, or seal in connection with any merchandise, retail product, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary of Defense.

(b) Whenever it appears to the Attorney General that any person is engaged or about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to hearing and determination of such action and may, at any time before such final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added Pub. L. 103–337, div. A, title X, §1074(a), Oct. 5, 1994, 108 Stat. 2861.)

§2798. Civil actions barred

(a) CLAIMS BARRED.—No civil action may be brought against the United States on the basis of the content of a navigational aid prepared or disseminated by the Defense Mapping Agency.

(b) NAVIGATIONAL AIDS COVERED.—Subsection (a) applies with respect to a navigational aid in the form of a map, a chart, or a publication and any other form or medium of product or information in which the Defense Mapping Agency prepares or disseminates navigational aids.

(Added Pub. L. 103–337, div. A, title X, §1074(b), Oct. 5, 1994, 108 Stat. 2861.)

EFFECTIVE DATE

Section 1074(d) of Pub. L. 103–337 provided that: ''Section 2798 of title 10, United States Code, as added by subsection (b), shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply with respect to (1) civil actions brought before such date that are pending adjudication on such date, and (2) civil actions brought on or after such date.''

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Subchapter		Sec.
I.	Military Construction	2801
II.	Military Family Housing	2821
III.	Administration of Military Construction and Military Family Housing.	2851

SUBCHAPTER I—MILITARY CONSTRUCTION

Sec.
2801. Scope of chapter; definitions.
2802. Military construction projects.
2803. Emergency construction.
2804. Contingency construction.
2805. Unspecified minor construction.
2806. Contributions for North Atlantic Treaty Organization Infrastructure.
2807. Architectural and engineering services and construction design.
2808. Construction authority in the event of a declaration of war or national emergency.
2809. Long-term facilities contracts for certain activities and services.
2810. Construction projects for environmental response actions.
2811. Repair of facilities.
2812. Lease-purchase of facilities.
2813. Acquisition of existing facilities in lieu of authorized construction.

AMENDMENTS

1994—Pub. L. 103–337, div. B, title XXVIII, §2801(b), Oct. 5, 1994, 108 Stat. 3050, substituted ''Repair'' for ''Renovation'' in item 2811.

1993—Pub. L. 103–160, div. B, title XXVIII, §2805(a)(2), Nov. 30, 1993, 107 Stat. 1887, added item 2813.

1991—Pub. L. 102–190, div. B, title XXVIII, §2805(a)(2), Dec. 5, 1991, 105 Stat. 1538, substituted ''Long-term facilities contracts for certain activities and services'' for ''Test of long-term facilities contracts'' in item 2809.

1989—Pub. L. 101–189, div. B, title XXVIII, §2809(b), Nov. 29, 1989, 103 Stat. 1650, added item 2812.

1987—Pub. L. 100–26, §7(e)(3), Apr. 21, 1987, 101 Stat. 281, redesignated item 2810 ''Renovation of facilities'' as item 2811.

1986—Pub. L. 99–661, div. A, title III, §315(b), Nov. 14, 1986, 100 Stat. 3854, added item 2810 ''Renovation of facilities''.

Pub. L. 99–499, title II, §211(b)(2), Oct. 17, 1986, 100 Stat. 1726, added item 2810 ''Construction projects for environmental response actions''.

1985—Pub. L. 99–167, title VIII, §811(b), Dec. 3, 1985, 99 Stat. 991, added item 2809.

§2801. Scope of chapter; definitions

(a) The term ''military construction'' as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation.

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

(c) In this chapter:

(1) The term ''facility'' means a building, structure, or other improvement to real property.

(2) The term ''military installation'' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense.

(3) The term ''Secretary concerned'' includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(4) The term ''appropriate committees of Congress'' means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(d) This chapter (other than sections 2830 and 2835) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 153; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VI, §632(b)(1), title XII, §1231(15), div. B, subdiv. 3, title I, §2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; Pub. L. 102–484, div. A, title X, §1052(37), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 102–496, title IV, §403(b), Oct. 24, 1992, 106 Stat. 3185.)

AMENDMENTS

1992—Subsec. (c)(4). Pub. L. 102–496 inserted before period at end ''and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate''.

Subsec. (d). Pub. L. 102–484 substituted ''sections 2830 and 2835'' for ''sections 2828(g) and 2830''.

1987—Subsec. (c). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1), (2), and (4) and substituted lowercase letter.

Subsec. (c)(3). Pub. L. 100–180, § 1231(15), substituted ''Defense Agencies'' for ''defense agencies''.

Subsec. (d). Pub. L. 100–180, § 2306(b), substituted ''(other than sections 2828(g) and 2830)'' for ''(other than section 2830)''.

Pub. L. 100–180, § 632(b)(1), inserted ''(other than section 2830)'' after ''This chapter''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section 12 of Pub. L. 97–214 provided:

''(a) Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on October 1, 1982, and shall apply to military construction projects, and to construction and acquisition of military family housing, authorized before, on, or after such date.

''(b) The amendment made by section 4 [amending section 138(f)(1) [now 114(b)] of this title] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1983.''

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–214 provided that: ''This Act [see Tables for classification] may be cited as the 'Military Construction Codification Act'.''

§ 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

(1) surveys and site preparation;

(2) acquisition, conversion, rehabilitation, and installation of facilities;

(3) acquisition and installation of equipment and appurtenances integral to the project;

(4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

(5) planning, supervision, administration, and overhead incident to the project.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 154.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS

Pub. L. 102–190, div. B, title XXVIII, § 2868, Dec. 5, 1991, 105 Stat. 1562, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall submit to Congress with the budget submitted under section 1105 of title 31, United States Code, for the fiscal year in which the first construction of a facility for the permanent basing of a new weapon system is to be authorized a report describing—

''(1) the site or sites selected or planned for permanent basing of the planned force of that weapon system;

''(2) the rationale for selecting such site or sites; and

''(3) the military construction activities proposed for each such site.

''(b) NEW WEAPON SYSTEM DEFINED.—For purposes of this section, the term 'new weapon system' means any military aircraft or major naval combatant vessel for which a complete permanent basing plan has not been publicly announced before the date of the enactment of this Act [Dec. 5, 1991].''

§ 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is $30,000,000.

(2) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 102–190, div. B, title XXVIII, §§ 2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562; Pub. L. 102–484, div. A, title X, § 1053(9), Oct. 23, 1992, 106 Stat. 2502.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–484 made technical amendment to directory language of Pub. L. 102–190, § 2870(2). See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–190, § 2803, substituted ''or to the protection of health, safety, or the quality of the environment, and'' for '', and'' in cl. (1) and inserted ''or the protection of health, safety, or environmental quality, as the case may be'' before period at end of cl. (2).

Subsec. (b). Pub. L. 102–190, § 2870(2), as amended by Pub. L. 102–484, struck out '', or after each such committee has approved the project, if the committee ap-

proves the project before the end of that period'' after ''by such committees''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(9) of Pub. L. 102–484 provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102–190, div. B, title XXVIII, §2870(3), Dec. 5, 1991, 105 Stat. 1563.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190 struck out before period at end '', or after each such committee has approved the project, if the committees approve the project before the end of that period''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2861 of this title.

§2805. Unspecified minor construction

(a)(1) Except as provided in paragraph (2), within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out minor military construction projects not otherwise authorized by law. A minor military construction project is a military construction project (1) that is for a single undertaking at a military installation, and (2) that has an approved cost equal to or less than $1,500,000.

(2) A Secretary may not use more than $5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chiefs of Staff outside the United States during any fiscal year.

(b)(1) A minor military construction project costing more than $500,000 may not be carried out under this section unless approved in advance by the Secretary concerned.

(2) When a decision is made to carry out a minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees.

(c)(1) Except as provided in paragraph (2), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified military construction project costing not more than $300,000.

(2) The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.

(d) Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 99–167, title VIII, §809, Dec. 3, 1985, 99 Stat. 989; Pub. L. 99–661, div. B, title VII, §2702(a), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–180, div. B, subdiv. 3, title I, §2310, Dec. 4, 1987, 101 Stat. 1217; Pub. L. 101–510, div. A, title XIII, §1301(16), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. B, title XXVIII, §§2807, 2870(4), Dec. 5, 1991, 105 Stat. 1540, 1563.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–190, §2807(a), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (b)(2). Pub. L. 102–190, §2870(4), in second sentence struck out ''(A)'' after ''carried out only'' and '', or (B) after each such committee approves the project, if the committees approve the project before the end of that period'' before period at end.

Subsec. (c)(1). Pub. L. 102–190, §2807(b), substituted ''$300,000'' for ''$200,000''.

1990—Subsec. (b)(3). Pub. L. 101–510 struck out par. (3) which read as follows: ''A project for the relocation of any activity from one installation to another that involves 25 or more full-time civilian employees of the Department of Defense but that is not subject to paragraph (1) may not be carried out under the authority of this section until the appropriate committees of Congress have been notified by the Secretary concerned of the intent to carry out such relocation under the authority of this section.''

1987—Subsec. (a). Pub. L. 100–180, §2310(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), within'' for ''Within'', and added par. (2).

Subsec. (c). Pub. L. 100–180, §2310(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

1986—Subsec. (a). Pub. L. 99–661, §2702(a)(1), substituted ''$1,000,000'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (b)(1). Pub. L. 99–661, §2702(a)(2), substituted ''$500,000'' for ''50 percent of the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (c). Pub. L. 99–661, §2702(a)(3), substituted ''$200,000'' for ''20 percent of the amount specified by law as the maximum amount for a minor military construction project''.

1985—Subsec. (a). Pub. L. 99–167, § 809(1), inserted ''an amount equal to 125 percent of''.

Subsec. (c). Pub. L. 99–167, § 809(2), substituted ''The'' for ''Only funds authorized for minor construction projects may be used to accomplish unspecified minor construction projects, except that the''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $1,000,000 for unspecified minor military construction project under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(1) of Pub. L. 97–214, set out as a note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2483, 2806, 2853, 2861, 18233a of this title.

§ 2806. Contributions for North Atlantic Treaty Organization Infrastructure

(a) Within amounts authorized by law for such purpose, the Secretary of Defense may make contributions for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area.

(b) Funds may not be obligated or expended in connection with the North Atlantic Treaty Organization Infrastructure program in any year unless such funds have been authorized by law for such program.

(c)(1) The Secretary may make contributions in excess of the amount appropriated for contribution under subsection (a) if the amount of the contribution in excess of that amount does not exceed 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project.

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1), the Secretary may make contributions in excess of such amount, but not in excess of 125 percent of the amount appropriated (A) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 97–321, title VIII, § 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–661, div. B, title V, § 2503(a), Nov. 14, 1986, 100 Stat. 4039; Pub. L. 100–26, § 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–190, div. B, title XXVIII, § 2870(5), Dec. 5, 1991, 105 Stat. 1563.)

AMENDMENTS

1991—Subsec. (c)(2)(B). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased contribution''.

1987—Subsec. (c)(1). Pub. L. 100–26 substituted ''specified by section 2805(a)(2) of this title'' for ''specified by law''.

1986—Subsec. (a). Pub. L. 99–661 inserted ''and for related expenses'' after ''headquarters)''.

1982—Pub. L. 97–321 substituted ''Infrastructure'' for ''infrastructure'' in section catchline.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 2503(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to contributions made with funds appropriated for fiscal years after fiscal year 1986.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

RESTRICTION ON CERTAIN FUNDING

Section 2504 of Pub. L. 99–661 prohibited Secretary of Defense from obligating or expending any funds after fiscal year 1987 with respect to NATO infrastructure program under this section until Secretary submitted to Committees on Armed Services of Senate and House (1) a comprehensive master plan for establishing adequate active defenses for air bases in Europe at which operations of United States aircraft are planned, sites in Europe used by United States for logistic support of NATO or for prepositioned overseas matériel configured to unit sets, and (2) a report containing a certification by Secretary that sufficient funds have been budgeted by Department of Defense in fiscal year 1988 five-year defense plan to meet objectives of such comprehensive master plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2861 of this title.

§ 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds $300,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services not less than 21 days before the initial obligation of funds for such services.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the appropriate committees of Con-

gress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report.

(d) For study, planning, design, architectural, and engineering services related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 98–115, title VIII, §804, Oct. 11, 1983, 97 Stat. 785; Pub. L. 99–661, div. B, title VII, §§2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; Pub. L. 102–190, div. B, title XXVIII, §2870(6), Dec. 5, 1991, 105 Stat. 1563.)

AMENDMENTS

1991—Subsec. (c)(2). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased level of activity''.

1986—Subsec. (b). Pub. L. 99–661, §2702(b), substituted ''$300,000'' for ''the maximum amount specified by law for the purposes of this section''.

Subsec. (d). Pub. L. 99–661, §2712(a), added subsec. (d).

1983—Subsec. (a). Pub. L. 98–115 substituted ''Within amounts appropriated for military construction and military family housing'' for ''Within amounts appropriated for such purposes'' and inserted '', family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are'' after ''in connection with military construction projects''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 2712(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to funds appropriated for fiscal years after fiscal year 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN CONTRACTS FOR MILITARY CONSTRUCTION PROJECTS

Pub. L. 98–212, title VII, §796, Dec. 8, 1983, 97 Stat. 1455, provided that: ''No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of $85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. §541, et seq.''

SMALL BUSINESS SET-ASIDE FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN

Section 806 of Pub. L. 98–115 provided that:

''(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

''(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

''(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and

''(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

''(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

''(d) For the purposes of this section:

''(1) The term 'reasonable share' means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Admininstrator [sic] of the Small Business Administration and representatives of the architect-engineer community.

''(2) The term 'reasonable threshold amount' means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Amounts of $300,000 or more for contracts for architectural and engineering services or construction design subject to the reporting requirement under this section during the period beginning on Oct. 1, 1982, and ending on the date of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(2) of Pub. L. 97–214, set out as a note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 2687, 2861 of this title.

§2808. Construction authority in the event of a declaration of war or national emergency

(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

(b) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

(c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157.)

REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 et seq.), referred to in subsec. (a), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 97–99, title IX, § 903, Dec. 23, 1981, 95 Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97–214, § 7(18).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EX. ORD. NO. 12734. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and 3 U.S.C. 301, I declared a national emergency by Executive Order No. 12722, dated August 2, 1990 [50 U.S.C. 1701 note], to deal with the threat to the national security and foreign policy of the United States caused by the invasion of Kuwait by Iraq. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

GEORGE BUSH.

§ 2809. Long-term facilities contracts for certain activities and services

(a) SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) AUTHORIZED PURPOSES OF CONTRACT.—The activities and services referred to in subsection (a) are as follows:

(1) Child care services.

(2) Utilities, including potable and waste water treatment services.

(3) Depot supply activities.

(4) Troop housing.

(5) Transient quarters.

(6) Hospital or medical facilities.

(7) Other logistic and administrative services, other than depot maintenance.

(c) CONDITIONS ON OBLIGATION OF FUNDS.—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) COMPETITIVE PROCEDURES.—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) TERM OF CONTRACT.—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into under this section until—

(1) the Secretary concerned submits to the appropriate committees of Congress, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

(2) a period of 21 calendar days has expired following the date on which the justification and the economic analysis are received by the committees.

(Added Pub. L. 99–167, title VIII, § 811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(20), div. B, title VII, § 2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100–456, div. B, title XXVIII, § 2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, § 2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, § 2805(a)(1), Dec. 5, 1991, 105 Stat. 1537.)

AMENDMENTS

1991—Pub. L. 102–190 substituted section catchline for one which read ''Test of long-term facilities contracts'' and amended text generally, substituting present provisions for provisions authorizing contracts for construc-

tion, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, providing that no more than 5 contracts may be entered into under this section other than contracts for child care centers, and providing that authority to enter into such contracts was to expire on Sept. 30, 1991.

1989—Subsec. (a)(1)(B)(ii). Pub. L. 101–189, §2803(1), substituted ''Utilities, including potable'' for ''Potable''.

Subsec. (b). Pub. L. 101–189, §2803(2), substituted ''activities and services described in clause (i) or (ii) of subsection (a)(1)(B)'' for ''child care centers''.

Subsec. (c). Pub. L. 101–189, §2803(3), substituted ''1991'' for ''1989''.

1988—Subsec. (a)(3). Pub. L. 100–456 substituted ''32'' for ''20''.

1987—Subsec. (a)(1)(B)(vi), (vii). Pub. L. 100–180, §2302(a), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (c). Pub. L. 100–180, §2302(b), substituted ''1989'' for ''1987''.

1986—Subsec. (a)(1). Pub. L. 99–661, §2711, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary concerned may enter into a contract for the construction, management, and operation of a facility on or near a military installation in the United States for the provision of child care services, waste water treatment, or depot supply activities in a case in which the Secretary concerned determines that the facility can be more efficiently and more economically provided under a long-term contract than by other appropriate means.''

Pub. L. 99–661, §1343(a)(20)(A), substituted ''a contract'' for ''contracts'', ''a facility'' for ''facilities'', ''a military installation'' for ''military installations'', ''a case'' for ''cases'', ''facility'' for ''facilities'', and ''a long-term contract'' for ''long-term contracts'' and inserted a comma after ''waste water treatment''.

Subsec. (a)(2). Pub. L. 99–661, §1343(a)(20)(B), substituted ''this section'' for ''subsection (a)''.

Subsec. (a)(3). Pub. L. 99–661, §1343(a)(20)(C), substituted ''20'' for ''twenty''.

Subsec. (a)(4)(A). Pub. L. 99–661, §1343(a)(20)(D), struck out ''the'' before ''Congress''.

Subsec. (b). Pub. L. 99–661, §1343(a)(20)(E), struck out ''the authority of subsection (a) of'' after ''under''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2805(b) of Pub. L. 102–190 provided that: ''Section 2809 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

REPORT

Section 2302(c) of Pub. L. 100–180 directed each Secretary who has entered into a contract under this section to submit a report to Committees on Armed Services of Senate and House of Representatives by Feb. 15, 1989, containing date and duration of, other party to, and nature of activities carried out under each such contract, and recommendations, and reasons therefor, concerning whether authority to enter into contracts under this section should be extended.

§2810. Construction projects for environmental response actions

(a) Subject to subsection (b), the Secretary of Defense may carry out a military construction project not otherwise authorized by law (or may authorize the Secretary of a military department to carry out such a project) if the Secretary of Defense determines that the project is necessary to carry out a response action under chapter 160 of this title or under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(b)(1) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include—

(A) the justification for the project and the current estimate of the cost of the project; and

(B) the justification for carrying out the project under this section.

(2) The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(c) In this section, the term ''response action'' has the meaning given that term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

(Added Pub. L. 99–499, title II, §211(b)(1), Oct. 17, 1986, 100 Stat. 1725.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (a), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

CODIFICATION

Another section 2810 of this title was renumbered section 2811.

§2811. Repair of facilities

(a) REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) APPROVAL REQUIRED FOR MAJOR REPAIRS.—A repair project costing more than $5,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(Added Pub. L. 99–661, div. A, title III, §315(a), Nov. 14, 1986, 100 Stat. 3854, §2810; renumbered

§ 2811, Pub. L. 100–26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103–337, div. B, title XXVIII, § 2801(a), Oct. 5, 1994, 108 Stat. 3050.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Repair'' for ''Renovation'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

''(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

''(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.''

§ 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

(A) Administrative office facilities.

(B) Troop housing facilities.

(C) Energy production facilities.

(D) Utilities, including potable and waste water treatment facilities.

(E) Hospital and medical facilities.

(F) Transient quarters.

(G) Depot or storage facilities.

(H) Child care centers.

(I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

(1) may not exceed a term of 32 years;

(2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and

(3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the appropriate committees of Congress a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

(B) a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees.

(2) Each Secretary concerned may, under this section, enter into—

(A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101–189, div. B, title XXVIII, § 2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101–510, div. B, title XXVIII, § 2864, Nov. 5, 1990, 104 Stat. 1806.)

AMENDMENTS

1990—Subsec. (a)(2)(I). Pub. L. 101–510 added subpar. (I).

§ 2813. Acquisition of existing facilities in lieu of authorized construction

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the end of the 30-day period beginning on the date the Secretary concerned transmits to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives a written notification of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2805(a)(1), Nov. 30, 1993, 107 Stat. 1886.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section 2805(b) of Pub. L. 103–160 provided that: ''Section 2813 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects authorized on or after the date of the enactment of this Act [Nov. 30, 1993].''

SUBCHAPTER II—MILITARY FAMILY HOUSING

Sec.
2821. Requirement for authorization of appropriations for construction and acquisition of military family housing.
2822. Requirement for authorization of number of family housing units.
2823. Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing.
2824. Authorization for acquisition of existing family housing in lieu of construction.
2825. Improvements to family housing units.
2826. Limitations on space by pay grade.
2827. Relocation of military family housing units.
2828. Leasing of military family housing.
2829. Multi-year contracts for supplies and services.
2830. Occupancy of substandard family housing units.
2831. Military family housing management account.
2832. Homeowners assistance program.
2833. Family housing support.
2834. Participation in Department of State housing pools.
2835. Long-term leasing of military family housing to be constructed.
2836. Military housing rental guarantee program.
2837. Limited partnerships with private developers of housing.

AMENDMENTS

1994—Pub. L. 103–337, div. B, title XXVIII, §2803(b), Oct. 5, 1994, 108 Stat. 3053, added item 2837.

1991—Pub. L. 102–190, div. B, title XXVIII, §§2806(a)(2), 2809(a)(2), Dec. 5, 1991, 105 Stat. 1540, 1543, added items 2835 and 2836.

1985—Pub. L. 99–167, title VIII, §§804(b)(2), 808(b), Dec. 3, 1985, 99 Stat. 987, 989, added items 2833 and 2834.

§2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

(a) Except as provided in subsection (b), funds may not be appropriated for the construction, acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

(c) Amounts authorized by law for construction of military family housing units include amounts for (1) site preparation (including demolition), (2) installation of utilities, (3) ancillary supporting facilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

(1) minor construction;

(2) improvements to existing military family housing units and facilities;

(3) relocation of military family housing units under section 2827 of this title; and

(4) architectural and engineering services and construction design.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 99–145, title XIII, §1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–167, title VIII, §804(a), Dec. 3, 1985, 99 Stat. 987.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99–145 substituted ''such subsection'' for ''such paragraph''.

Subsec. (d). Pub. L. 99–167 added subsec. (d).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

PILOT PROGRAM FOR MILITARY FAMILY HOUSING

Pub. L. 100–180, div. B, subdiv. 3, title II, §2321, Dec. 4, 1987, 101 Stat. 1218, required Secretary of Defense, using $1,000,000 of funds appropriated pursuant to authorization in subsection (a)(10)(B) of section 2145 of Pub. L. 100–180, to establish and carry out, during fiscal years 1988, 1989, and 1990, a pilot program for purpose of assisting units of general local government to increase amount of affordable family housing available to military personnel; required Secretary, establishing and carrying out such programs, to select at least five units of general local government severely impacted by presence of military bases and personnel; set forth criteria for selection of units of general local government, authority to make grants, cooperative agreements, etc., and uses of available funds; and required Secretary to report to Committees on Armed Services of Senate and House no later than Mar. 15 of 1988, 1989, 1990, and 1991 with respect to activities carried out under this section.

MILITARY HOUSING RENTAL GUARANTEE PROGRAM

Pub. L. 98–115, title VIII, §802, Oct. 11, 1983, 97 Stat. 783, as amended by Pub. L. 98–407, title VIII, §806(b), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, §801(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. B, title VII, §2713(a), Nov. 14, 1986, 100 Stat. 4042; Pub. L. 100–180, div. B, subdiv. 3, title I, §2307, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–189, div. B, title XXVIII, §2801, Nov. 29, 1989, 103 Stat. 1646; Pub. L. 101–510, div. B, title XXVIII, §2811, Nov. 5, 1990, 104 Stat. 1788, provided for agreements and contracts relating to military housing rental guarantee program, prior to repeal by Pub. L. 102–190, div. B, title XXVIII, §2809(b), (c), Dec. 5, 1991, 105 Stat. 1543, such repeal not to affect the validity of any contract entered into before Dec. 5, 1991, under section 802 of Pub. L. 98–115 as in effect on Dec. 4, 1991. See section 2836 of this title.

FAMILY HOUSING CONSTRUCTED OVERSEAS

Pub. L. 98–115, title VIII, §803, Oct. 11, 1983, 97 Stat. 784, as amended by Pub. L. 98–407, title VIII, §812, Aug.

28, 1984, 98 Stat. 1524; Pub. L. 101–510, div. A, title XIII, § 1302(f), Nov. 5, 1990, 104 Stat. 1669, provided that:

''(a) The Secretary of Defense shall ensure that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country shall (1) require the use of manufactured or factory-built housing which is fabricated in the United States by a United States contractor, or (2) in the case of concrete housing, the use of housing (A) that is produced in a plant that was fabricated in the United States by a United States company, and (B) for which the materials, fixtures, and equipment used in the construction of such housing (other than cement, sand, and aggregates) are manufactured in the United States.

''(b) The Secretary of Defense may waive subsection (a) with respect to not more than 10 percent of the total number of military family housing units authorized to be constructed in foreign countries in any year if the Secretary determines that with respect to such units compliance with the requirement in such subsection is infeasible.

''(c) This section shall apply to any contract entered into after the date of the enactment of this Act [Oct. 11, 1983].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 114 of this title.

§ 2822. Requirement for authorization of number of family housing units

(a) Except as otherwise provided in subsection (b) or as otherwise authorized by law, the Secretary concerned may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law.

(b) Subsection (a) does not apply to the following:

(1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).

(2) Housing units leased under section 2828 of this title.

(3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.

(4) Housing units acquired without consideration.

(5) Replacement housing units constructed under section 2825(c) of this title.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 98–525, title XIV, § 1405(44), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2308, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–510, div. A, title XIII, § 1301(17), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–25, title VII, § 701(j)(9), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. B, title XXVIII, § 2802(b), Oct. 23, 1992, 106 Stat. 2606.)

AMENDMENTS

1992—Subsec. (b)(5). Pub. L. 102–484 added par. (5).

1991—Subsec. (b)(4). Pub. L. 102–25 realigned margin of par. (4).

1990—Subsec. (b)(4). Pub. L. 101–510 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Housing units acquired without consideration, if—

''(A) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed acquisition; and

''(B) a period of 21 days elapses after the notification is received by those committees.''

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1984—Subsec. (b)(3). Pub. L. 98–525 substituted ''section 2832'' for ''section 2833''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2823. Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing

(a) Before entering into a contract for the construction of family housing units authorized by law to be constructed at a location within the United States, the Secretary concerned shall consult in writing with the Secretary of Housing and Urban Development as to the availability of suitable alternative housing at such location. The Secretary of Housing and Urban Development shall advise the Secretary concerned in writing as to the availability of such housing. If the Secretary of Housing and Urban Development does not advise the Secretary concerned as to the availability of such housing within 21 days of the date on which the request for such advice is made, the Secretary concerned may enter into a contract for the proposed construction.

(b) If the Secretary concerned and the Secretary of Housing and Urban Development disagree with respect to the availability of suitable alternative housing at any location, the Secretary concerned shall notify the appropriate committees of Congress, in writing, of the disagreement, of the Secretary's decision to proceed with the construction, and of the justification for proceeding with the construction. A contract for construction of family housing units at such location may not then be entered into until the end of the 21-day period beginning on the date such committees receive the notification.

(c) If the Secretary concerned and the Secretary of Housing and Urban Development agree that suitable alternative housing is available at a location at which military family housing units are authorized to be constructed, the Secretary may not proceed with such construction.

(d) The Secretary of Defense shall prescribe regulations to define what constitutes suitable alternative housing for the purposes of this section.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 158.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2824. Authorization for acquisition of existing family housing in lieu of construction

(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary concerned may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Development, except that in foreign countries the Secretary concerned may acquire less than sole interest in existing family housing units.

(b) When authority provided by law to construct military family housing units is used to acquire existing family housing units under subsection (a), the authority includes authority to acquire interests in land.

(c) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2826 of this title.

(d) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 159.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2825. Improvements to family housing units

(a)(1) Authority provided by law to improve existing military family housing units and ancillary family housing support facilities is authority to make alterations, additions, expansions, and extensions.

(2) In this section, the term ''improvement'' includes rehabilitation of a housing unit and maintenance or repair work to be accomplished concurrently with an improvement project.

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) $50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, $60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if (i) such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective, and (ii) a period of 21 days elapses after the date on which the Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.

(2) In determining the applicability of the limitation contained in paragraph (1), there shall be included as part of the cost of the improvement the cost of repairs undertaken in connection with the improvement and any cost in connection with (A) the furnishing of electricity, gas, water and sewage disposal, (B) the construction or repair of roads and walks, and (C) grading and drainage work.

(3) The limitation contained in the first sentence of paragraph (1) does not apply to a project for the improvement of a family housing unit or units referred to in that sentence if the project (including the amount requested for the project) is identified in the budget materials submitted to Congress by the Secretary of Defense in connection with the submission to Congress of the budget for a fiscal year pursuant to section 1105 of title 31.

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) the improvement of the existing housing units has been authorized by law;

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates;

(C) the Secretary submits to the committees referred to in subsection (b)(1) a notice containing—

(i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same pay grade or grades as those members who occupy the existing housing units; and

(ii) if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, a justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned; and

(D) a period of 21 days elapses after the date on which the Secretary submits the notice required by subparagraph (C).

(2) The amount that may be expended to construct replacement military family housing units under this subsection may not exceed the amount that is otherwise available to carry out the previously authorized improvement project.

(d) This section does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 99–661, div. B, title VII, §2702(c), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, §2305, Dec. 4, 1987, 101 Stat. 1215; Pub. L. 101–189, div. B, title XXVIII, §2804, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 101–510, div. B, title XXVIII, §2812, Nov. 5, 1990, 104 Stat. 1788; Pub. L. 102–484, div. B, title XXVIII, §2802(a), Oct. 23, 1992, 106 Stat. 2605; Pub. L. 103–337, div. B, title XXVIII, §2802, Oct. 5, 1994, 108 Stat. 3050.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–337 added par. (3).

1992—Subsecs. (c), (d). Pub. L. 102–484 added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsec. (b)(1). Pub. L. 101–510 substituted ''$50,000'' for ''$40,000'' in cl. (A) and inserted at end sentence authorizing Secretary concerned to waive limitations contained in preceding sentence.

1989—Subsec. (b)(1). Pub. L. 101–189 inserted ''(A)'' after ''will exceed'' and added cl. (B).

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b)(1). Pub. L. 100–180 substituted ''$40,000'' for ''$30,000''.

1986—Subsec. (b)(1). Pub. L. 99–661 substituted ''$30,000'' for ''an amount specified by law for such purpose''.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $30,000 per unit for an improvement project for family housing units under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(3) of Pub. L. 97–214, set out as a note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2822 of this title.

§ 2826. Limitations on space by pay grade

(a) In the construction, acquisition, and improvement of military family housing units, the following are the space limitations for the applicable numbers of bedrooms permitted for each pay grade:

Pay grade	Number of bedrooms	Net floor area (square feet)
0–7 and above	4	2,100
0–6	4	1,700
0–4 and 0–5	4	1,550
	3	1,400
0–1 through 0–3; W–1 through W–4; and E–7 through E–9	5	1,550
	4	1,450
	3	1,350
	2	950
E–1 through E–6	5	1,550
	4	1,350
	3	1,200
	2	950

(b) The applicable maximum net floor area prescribed by subsection (a) may be increased by 10 percent for the housing unit of an officer holding a special command position (as designated by the Secretary of Defense), for the housing unit of the commanding officer of a military installation, and for the senior noncommissioned officer of a military installation.

(c) The maximum net floor area prescribed by subsection (a) may be increased in any case by 5 percent if the Secretary concerned determines that the increase is in the best interest of the Government (1) to permit award of a turnkey construction contract to the contractor offering the most satisfactory proposal, or (2) to permit purchase, lease, or conversion of housing units. An increase in the maximum net floor area of a housing unit under subsection (b) when combined with an increase in the maximum net floor area of such unit under this subsection may not exceed 10 percent of the otherwise applicable limitation prescribed by subsection (a).

(d) The applicable maximum net floor area prescribed by subsection (a) may be increased by 300 square feet for a family housing unit in a location where harsh climatological conditions severely restrict outdoor activity for a significant part of each year, as determined by the Secretary concerned pursuant to regulations prescribed by the Secretary of Defense. The regulations shall apply uniformly to the armed forces.

(e) In the case of the acquisition by purchase of military family housing units for members of the armed forces in pay grades below pay grade O–6, the applicable maximum net floor area prescribed by subsection (a) may be increased by 20 percent if the Secretary concerned determines that the purchase of larger units is cost effective when compared to available units within the space limitations specified in that subsection. The authority provided by this subsection shall expire on September 30, 1994.

(f)(1) The Secretary concerned may waive the provisions of subsection (a) with respect to a family housing unit leased in a foreign country if a suitable family housing unit within the applicable maximum net floor area prescribed by such subsection cannot be obtained.

(2) Subsection (a) does not apply to family housing units in foreign countries constructed or acquired by the Secretary of State for occupancy by members of the armed forces.

(g) The maximum net floor areas prescribed by this section apply to family housing provided to civilian personnel based upon civilian pay scale comparability with military pay grades, as determined by the Secretary of Defense.

(h) In this section, the term ''net floor area'' means the total number of square feet of the floor space inside the exterior walls of a structure, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. B, title XXVIII, § 2808, Dec. 5, 1991, 105 Stat. 1540.)

AMENDMENTS

1991—Subsecs. (d) to (h). Pub. L. 102–190 added subsecs. (d) and (e) and redesignated former subsecs. (d) to (f) as (f) to (h), respectively.

1987—Subsec. (f). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2824 of this title.

§ 2827. Relocation of military family housing units

(a) Subject to subsection (b), the Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 160.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2821 of this title.

§ 2828. Leasing of military family housing

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is a shortage of adequate housing at or near such military installation and that—

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraph (3), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed $12,000 per unit per year.

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds $12,000 per unit per year but does not exceed $14,000 per unit per year.

(4) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for under paragraphs (2) and (3) for the previous fiscal year by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense—

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of ten years, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed $20,000 per unit per year, except that 300 units may be leased in foreign countries for not more than $25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 220 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 300 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Navy may lease not more than 2,000 units of family housing in Italy subject to that maximum lease amount.

(3) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1) and (2) for the previous fiscal year—

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(4) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 53,000.

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds $500,000 may not be made under this section until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 161; amended Pub. L. 97–321, title VIII, § 805(b)(2), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 98–115, title VIII, § 801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98–407, title VIII, § 806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, §§ 801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; Pub. L. 99–661, div. B, title VII, §§ 2702(d)–(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040–4042; Pub. L. 100–26, § 7(j)(8), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. B, subdiv. 3, title I, §§ 2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; Pub. L. 100–370, § 1(*l*)(2), July 19, 1988, 102 Stat. 849; Pub. L. 100–456, div. B, title XXVIII, § 2802, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §§ 2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; Pub. L. 102–190, div. B, title XXVIII, § 2806(b), Dec. 5, 1991, 105 Stat. 1540; Pub. L. 103–35, title II, § 201(d)(7), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. B, title XXVIII, § 2801, Nov. 30, 1993, 107 Stat. 1883.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (h) of this section and section 2673 of this title are based on Pub. L. 98–212, title VII, § 707, Dec. 8, 1983, 97 Stat. 1438.

AMENDMENTS

1993—Subsec. (b)(2), (3). Pub. L. 103–35 substituted ''per year'' for ''per annum'' in par. (2) and in two places in par. (3).

Subsec. (b)(4). Pub. L. 103–160, § 2801(a), added par. (4).

Subsec. (e)(1). Pub. L. 103–160, § 2801(b)(1), (2), substituted '', except that 300 units may be leased in foreign countries for not more than $25,000 per unit per year'' for ''as adjusted for foreign currency fluctuation from October 1, 1987'' in first sentence and ''These maximum lease amounts'' for ''That maximum lease amount'' in second sentence.

Pub. L. 103–35 substituted ''per year'' for ''per annum''.

Subsec. (e)(2) to (4). Pub. L. 103–160, § 2801(b)(3), (4), added pars. (2) and (3) and redesignated former par. (2) as (4).

1991—Subsecs. (g), (h). Pub. L. 102–190 redesignated subsec. (h) as (g) and struck out former subsec. (g) which authorized contracts for lease of family housing units on or near military installations at which there is a validated deficit in family housing. See section 2835 of this title.

1989—Subsec. (b)(2). Pub. L. 101–189, § 2802(1), substituted ''$12,000'' for ''$10,000''.

Subsec. (b)(3). Pub. L. 101–189, § 2802(2), substituted ''Not'' for ''(A) Except as provided in subparagraph (B), not'', ''$12,000'' for ''$10,000'', and ''$14,000'' for ''$12,000'' and struck out subpar. (B) which read as follows: ''During fiscal years 1986 and 1987, the number of housing units that may be leased pursuant to the provisions of subparagraph (A) may be increased by 500 units for each such fiscal year. The Secretary concerned shall provide written notification to the Committees on Armed Services of the Senate and House of Representatives concerning the location, purpose, and cost of the additional units permitted by this subparagraph. Such notification shall be made periodically as the leases are entered into.''

Subsec. (e)(1). Pub. L. 101–189, § 2802(3), inserted ''as adjusted for foreign currency fluctuation from October 1, 1987'' after ''$20,000 per unit per annum''.

Subsec. (e)(2). Pub. L. 101–189, § 2802(4), substituted ''53,000'' for ''38,000''.

Subsec. (g)(7). Pub. L. 101–189, § 2805(1), added par. (7) and struck out former par. (7) which provided that this subsection could only be implemented by a pilot program, and that in carrying out such program, the Secretary of each military department or the Secretary of Transportation with respect to the Coast Guard, could not enter into more than two contracts under this subsection, and any such contract could not be for more than 300 family housing units.

Subsec. (g)(8). Pub. L. 101–189, § 2805, redesignated par. (9) as (8), substituted ''1991'' for ''1989'', and struck out former par. (8) which authorized the Secretaries of the military departments and the Secretary of Transportation to enter into contracts for family housing units in addition to those authorized in par. (7).

Subsec. (g)(9), (10). Pub. L. 101–189, § 2805(2), redesignated par. (10) as (9). Former par. (9) redesignated (8).

1988—Subsec. (e)(2). Pub. L. 100–456 substituted ''38,000'' for ''36,000''.

Subsec. (h). Pub. L. 100–370 added subsec. (h).

1987—Subsec. (a)(1). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (b)(2). Pub. L. 100–180, § 2309(b)(1), inserted ''per unit per annum'' after ''$10,000''.

Subsec. (b)(3)(A). Pub. L. 100–180, § 2309(b)(2), substituted ''$10,000 per unit per annum but does not exceed $12,000 per unit per annum'' for ''$10,000 but does not exceed $12,000''.

Subsec. (c). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (e)(1). Pub. L. 100–180, § 2309(a)(1), substituted ''$20,000 per unit per annum'' for ''$16,800''.

Subsec. (e)(2). Pub. L. 100–180, § 2309(a)(2), substituted ''36,000'' for ''32,000''.

Subsec. (f). Pub. L. 100–180, § 2311, substituted ''$500,000'' for ''$250,000''.

Subsec. (g)(1). Pub. L. 100–180, § 2306(a)(1), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department'' and ''or rehabilitated to residential use'' after ''constructed''.

Subsec. (g)(7)(A). Pub. L. 100–180, § 2306(a)(2), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department''.

Subsec. (g)(8)(C). Pub. L. 100–180, § 2306(a)(3), added subpar. (C).

Subsec. (g)(9). Pub. L. 100–180, § 2306(a)(4), substituted ''1989'' for ''1988''.

1986—Subsec. (b)(2). Pub. L. 99–661, § 2702(d)(1), substituted ''$10,000'' for ''the amount specified by law as the maximum annual domestic family housing unit lease amount''.

Subsec. (b)(3)(A). Pub. L. 99–661, § 2702(d)(2), substituted ''$10,000 but does not exceed $12,000'' for ''the maximum annual domestic family housing unit lease amount but does not exceed 120 percent of that amount''.

Subsec. (e)(1). Pub. L. 99–661, §2714, substituted ''220'' for ''200''.

Pub. L. 99–661, §2702(e), substituted ''$16,800'' for ''the amount specified by law as the maximum annual foreign family housing unit lease amount''.

Subsec. (e)(2). Pub. L. 99–661, §2702(f), substituted ''is 32,000'' for ''shall be specified by law''.

Subsec. (f). Pub. L. 99–661, §2702(g), substituted ''$250,000'' for ''the amount specified by law for such purpose''.

Subsec. (g)(8)(B). Pub. L. 99–661, §2713(b)(1), substituted ''1,600'' for ''600''.

Subsec. (g)(9). Pub. L. 99–661, §2713(b)(2), substituted ''September 30, 1988'' for ''September 30, 1986''.

Subsec. (g)(10). Pub. L. 99–661, §2713(b)(3), added par. (10).

1985—Subsec. (b)(3). Pub. L. 9–167, §805, designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), not'' for ''Not'', and added subpar. (B).

Subsec. (d). Pub. L. 99–167, §803, designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(8). Pub. L. 99–167, §801(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(9). Pub. L. 99–167, §801(b)(1), substituted ''September 30, 1986'' for ''October 1, 1985''.

1984—Subsec. (g)(8), (9). Pub. L. 98–407 added par. (8) and redesignated former par. (8) as (9).

1983—Subsec. (g). Pub. L. 98–115 added subsec. (g).

1982—Subsec. (e)(1). Pub. L. 97–321 inserted ''the'' after ''may be waived by'' in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2806(c) of Pub. L. 102–190 provided that: ''Section 2835 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b)(1) [amending this section] shall not affect the validity of any contract entered into before that date under section 2828(g) of such title, as in effect on the day before that date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 806(c) of Pub. L. 98–407 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 2821 of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2822, 2834 of this title.

§2829. Multi-year contracts for supplies and services

The Secretary concerned may make contracts for periods of up to four years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 162.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2830. Occupancy of substandard family housing units

(a)(1) A member of the uniformed services with dependents may, without loss of the member's basic allowance for quarters, occupy a substandard family housing unit under the jurisdiction of the Secretary concerned.

(2) Occupancy of a family housing unit under paragraph (1) shall be subject to a charge against the member's basic allowance for quarters in the amount of the fair rental value of the housing unit. However, such a charge may not be made in an amount in excess of 75 percent of the amount of such allowance.

(b)(1) The Secretary concerned may lease substandard family housing units to members of any of the uniformed services for occupancy by such members.

(2) The authority to enter into leases under paragraph (1) shall be exercised—

(A) in the case of a lease by the Secretary of a military department, subject to regulations prescribed by the Secretary of Defense; and

(B) in the case of a lease by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, subject to regulations prescribed by that Secretary.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 99–348, title III, §304(a)(4), July 1, 1986, 100 Stat. 703; Pub. L. 100–180, div. A, title VI, §632(a), Dec. 4, 1987, 101 Stat. 1105.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–180, §632(a)(1), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (b). Pub. L. 100–180, §632(a)(2), (3), designated existing provisions as par. (1), substituted ''The Secretary concerned'' for ''Subject to regulations prescribed by the Secretary of Defense, the Secretary of a military department'', and added par. (2).

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ''uniformed services'' in this section to mean the armed forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration. See section 101 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2801 of this title.

§2831. Military family housing management account

(a) There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the ''account''). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) The account shall be administered as a single account. There shall be transferred into the account—

(1) appropriations made for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, operation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)).

(c) Amounts in the account shall remain available until spent.

(d) The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2832. Homeowners assistance program

(a) The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

(b)(1) Subject to paragraph (2) and notwithstanding subsection (i) of section 1013 of the Act referred to in subsection (a)—

(A) the Secretary of Defense may transfer not more than $31,000,000 from the Department of Defense Base Closure Account, established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627), to the fund established pursuant to subsection (d) of such section 1013 for use as part of such fund; and

(B) any funds so transferred shall be available for obligation and expenditure for the same purposes that funds appropriated to such fund are available, except that such funds may not be obligated after September 30, 1991.

(2) Amounts may be transferred under paragraph (1) only after the date on which the Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives receive from the Secretary written notice of, and justification for, the transfer.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 101–189, div. B, title XXVIII, § 2831(a), Nov. 29, 1989, 103 Stat. 1660.)

REFERENCES IN TEXT

Section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(1)(A), is section 207 of Pub. L. 100–526, which is set out as a note under section 2687 of this title.

AMENDMENTS

1989—Pub. L. 101–189 designated existing provisions as subsec. (a) and added subsec. (b).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2831(b) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to funds appropriated or transferred to, or otherwise deposited in, the Department of Defense Base Closure Account for, or during, fiscal years beginning after September 30, 1989.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2822 of this title.

§ 2833. Family housing support

Amounts authorized by law for support of military family housing include amounts for—

(1) operating expenses;

(2) leasing expenses;

(3) maintenance of real property expenses;

(4) payments of principal and interest on mortgage debts incurred; and

(5) payments of mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99–167, title VIII, § 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

§ 2834. Participation in Department of State housing pools

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

(1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and

(2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agree-

ment, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

(b) The maximum lease amounts specified in section 2828(e)(1) of this title for the rental of family housing in foreign countries shall not apply to housing made available to the Department of Defense under this section. To the extent that the lease amount for units of housing made available under this subsection exceeds such maximum lease amounts, such units shall not be counted in applying the limitation contained in such section on the number of units of family housing for which the Secretary concerned may waive such maximum lease amounts.

(Added Pub. L. 99–167, title VIII, §808(a), Dec. 3, 1985, 99 Stat. 989; amended Pub. L. 101–510, div. A, title XIII, §1301(18), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–160, div. B, title XXVIII, §2806, Nov. 30, 1993, 107 Stat. 1887.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing the number of leases for which the maximum lease amount may be waived by the Secretary concerned under the second sentence of section 2828(e)(1) of this title, housing made available to the Department of Defense under this section shall be included.''

1990—Subsecs. (b), (c). Pub. L. 101–510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Agreements entered into with the Secretary of State under this section may not be executed until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed agreement, and (2) a period of 21 days has elapsed after the day on which the notification is received by the committees.''

§2835. Long-term leasing of military family housing to be constructed

(a) BUILD AND LEASE AUTHORIZED.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.—(1) The Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) COMPETITIVE PROCESS.—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Transportation, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Transportation specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM.—A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE.—A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(h) SUPPORT BUILDINGS.—A contract for the lease of family housing under this section may include provision for the lease of a child care

center, civic center building, and similar type buildings constructed for the support of family housing.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2806(a)(1), Dec. 5, 1991, 105 Stat. 1539.)

PRIOR PROVISIONS

Prior similar provisions were contained in subsec. (g) of section 2828 of this title, which was struck out by Pub. L. 102–190, § 2806(b)(1).

EFFECTIVE DATE

Section applicable with respect to contracts entered into under this section on or after Dec. 5, 1991, see section 2806(c) of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2801 of this title.

§ 2836. Military housing rental guarantee program

(a) AUTHORITY.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.—(1) The Secretary of a military department, or the Secretary of Transportation with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.

(c) CONTENT OF AGREEMENT.—An agreement under subsection (a)—

(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause;

(3) may apply to existing housing;

(4) shall require that the housing units be constructed—

(A) in the case of a Department of Defense agreement, to Department of Defense specifications or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes; and

(B) in the case of an agreement for the Coast Guard, to Department of Transportation specifications;

(5) may not be for a term in excess of 25 years;

(6) may not be renewed unless the project is located on government owned land, in which case the renewal period may not exceed the original contract term;

(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

(8) may only be entered into to the extent that there is a shortage in military family housing;

(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

(10) shall provide for priority of occupancy for military families;

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary of Transportation with respect to the Coast Guard, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing;

(13) may provide that utilities, trash collection, snow removal, and entomological services will be furnished by the Federal Government at no cost to the occupant to the same extent that these items are provided to occupants of housing owned by the Federal Government; and

(14) may require that rent collection and operation and maintenance services in connection with the housing be under the terms of a separate agreement or be carried out by personnel of the Federal Government.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—An agreement entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the agreement in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the agreement when and to the extent that funds are appropriated for such project for such fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(e) COMPETITIVE PROCESS.—An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Transportation, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing rental guaranty project authorized in accordance with subsection (b).

(f) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(g) DISPUTES.—The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(Added Pub. L. 102–190, div. B, title XXVIII, §2809(a)(1), Dec. 5, 1991, 105 Stat. 1541.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (g), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in Pub. L. 98–115, title VIII, §802, Oct. 11, 1983, 97 Stat. 783, as amended, which was set out as a note under section 2821 of this title, prior to repeal by Pub. L. 102–190, §2809(b).

EFFECTIVE DATE

Section 2809(c) of Pub. L. 102–190 provided that: ''Section 2836 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b) [repealing provisions set out as a note under section 2821 of this title] shall not affect the validity of any contract entered into before that date under section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), as in effect on the day before that date.''

§2837. Limited partnerships with private developers of housing

(a) LIMITED PARTNERSHIPS.—(1) In order to meet the housing requirements of members of the naval service, and the dependents of such members, at a military installation described in paragraph (2), the Secretary of the Navy may enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of the installation. The Secretary may contribute not less than five percent, but not more than 35 percent, of the development costs under a limited partnership.

(2) Paragraph (1) applies to a military installation under the jurisdiction of the Secretary at which there is a shortage of suitable housing to meet the requirements of members and dependents referred to in such paragraph.

(b) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary may also enter into collateral incentive agreements with private developers who enter into a limited partnership under subsection (a) to ensure that, where appropriate—

(1) a suitable preference will be afforded members of the naval service in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the limited partnership; or

(2) the rental rates or sale prices, as the case may be, for some or all of such units will be affordable for such members.

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) The Secretary shall use publicly advertised, competitively bid or competitively negotiated, contracting procedures, as provided in chapter 137 of this title, to enter into limited partnerships under subsection (a).

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary. The Secretary may then enter into the limited partnership only after the end of the 21-day period beginning on the date the report is received by such committees.

(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the ''Navy Housing Investment Account''.

(2) There shall be deposited into the Account—

(A) such funds as may be authorized for and appropriated to the Account; and

(B) any proceeds received by the Secretary from the repayment of investments or profits on investments of the Secretary under subsection (a).

(3) In such amounts as is provided in advance in appropriation Acts, the Account shall be available for contracts, investments, and expenses necessary for the implementation of this section.

(4) The Secretary may not enter into a contract in connection with a limited partnership

under subsection (a) or a collateral incentive agreement under subsection (b) unless the Account contains sufficient funds, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.

(e) NAVY HOUSING INVESTMENT BOARD.—(1) The Secretary of the Navy shall establish a board to be known as the ''Navy Housing Investment Board'', which shall have the duties—

(A) of advising the Secretary regarding those proposed limited partnerships under subsection (a), if any, that are financially and otherwise sound investments for meeting the objectives of this section;

(B) of administering the Account established under subsection (d); and

(C) of assisting the Secretary in such other ways as the Secretary determines to be necessary and appropriate to carry out this section.

(2) The Navy Housing Investment Board shall be composed of seven members appointed for a two-year term by the Secretary. Among such members, the Secretary may appoint two persons from the private sector who have knowledge and experience in the financing and the construction of housing. The Secretary shall designate one of the members as chairperson of the Board.

(3) Members of the Navy Housing Investment Board, other than those members regularly employed by the Federal Government, may be paid while attending meetings of the Board or otherwise serving at the request of the Secretary, compensation at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Board. Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with section 5702 and 5703 of title 5.

(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Navy Housing Investment Board.

(f) REPORT.—Not later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this section, the Secretary shall transmit to Congress a report specifying the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year.

(g) TRANSFER OF NAVY LANDS PROHIBITED.—Nothing in this section shall be construed to permit the Secretary, as part of a limited partnership entered into under this section, to transfer the right, title, or interest of the United States in any real property under the jurisdiction of the Secretary.

(h) EXPIRATION AND TERMINATION OF AUTHORITIES.—(1) The authority of the Secretary to enter into a limited partnership under this section shall expire on September 30, 1999.

(2) The Navy Housing Investment Board shall terminate on November 30, 1999.

(Added Pub. L. 103–337, div. B, title XXVIII, § 2803(a), Oct. 5, 1994, 108 Stat. 3051.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.
2851. Supervision of military construction projects.
2852. Military construction projects: waiver of certain restrictions.
2853. Authorized cost variations.
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2855. Law applicable to contracts for architectural and engineering services and construction design.
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2859. Transmission of annual military construction authorization request.
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2864. Military construction contracts on Guam.
2865. Energy savings at military installations.
2866. Water conservation at military installations.

AMENDMENTS

1993—Pub. L. 103–160, div. B, title XXVIII, § 2803(b), Nov. 30, 1993, 107 Stat. 1885, added item 2866.

1990—Pub. L. 101–510, div. B, title XXVIII, § 2851(b), Nov. 5, 1990, 104 Stat. 1804, added item 2865.

1989—Pub. L. 101–189, div. B, title XXVIII, § 2807(b), Nov. 29, 1989, 103 Stat. 1648, added item 2864.

1987—Pub. L. 100–180, div. B, subdiv. 3, title I, § 2303(b), Dec. 4, 1987, 101 Stat. 1215, added item 2863.

1986—Pub. L. 99–661, div. A, title XIII, § 1343(a)(21)(B), Nov. 14, 1986, 100 Stat. 3994, struck out ''for five years'' after ''Availability of appropriations'' in item 2860.

1985—Pub. L. 99–167, title VIII, § 807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

1982—Pub. L. 97–321, title VIII, § 801(b)(3), Oct. 15, 1982, 96 Stat. 1571, substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in item 2857.

§ 2851. Supervision of military construction projects

(a) Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2861 of this title.

§2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 355 of the Revised Statutes (40 U.S.C. 255); and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97–295, §1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, §805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–145, title XIII, §1303(a)(19), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

Subsec. (b). Pub. L. 97–321 substituted ''may be exercised on land not owned by the United States'' for ''on land not owned by the United States may be exercised'' in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: ''even though the land is held temporarily''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2853. Authorized cost variations

(a) Except as provided in subsection (c) or (d), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a)(1), whichever is less, if the Secretary concerned determines that such an increase in cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was approved originally by Congress.

(b) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount approved for that project, construction, improvement, or acquisition by Congress.

(c) The limitation on cost increase in subsection (a) or the limitation on scope reduction in subsection (b) does not apply if—

(1) the increase in cost or reduction in scope is approved by the Secretary concerned;

(2) the Secretary concerned notifies the appropriate committees of Congress in writing of the increase or reduction and the reasons therefor; and

(3) a period of 21 days has elapsed after the date on which the notification is received by the committees.

(d) The limitation on cost increases in subsection (a) does not apply to a within-scope modification to a contract or to the settlement of a contractor claim under a contract if the increase in cost is approved by the Secretary concerned, and the Secretary concerned promptly submits written notification of the facts relating to the proposed increase in cost to the appropriate committees of Congress.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98–407, title VIII, §807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100–26, §7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–180, div. B, subdiv. 3, title I, §§2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101–189, div. B, title XXVIII, §2808, Nov. 29, 1989, 103 Stat. 1648.)

AMENDMENTS

1989—Pub. L. 101–189 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) to (f).

1987—Subsec. (a)(1). Pub. L. 100–180, §2312, substituted ''Except as provided in paragraph (2), the total cost authorized for military construction projects at an installation (including each project the cost of which is included in such total authorized cost and is less than the minor project ceiling) may be increased by not more than 25 percent of the total amount appropriated for such projects'' for ''Except as provided in paragraph (2), the cost authorized for a military construction project (other than a project for which the approved amount is less than the minor project ceiling (as defined in subsection (f))) may be increased by not more than 25 percent of the amount appropriated for the project''.

Pub. L. 100–26, §7(f)(2)(A), substituted ''the minor project ceiling (as defined in subsection (f))'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Pub. L. 100–26, §7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (a)(2). Pub. L. 100–26, §7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' in two places.

Subsec. (b). Pub. L. 100–26, §7(f)(2)(B), (C), substituted ''the minor project ceiling'' for ''the amount specified

by law as the maximum amount for a minor military construction project'' and ''the amount of such ceiling'' for ''such maximum amount'' in two places.

Subsec. (c). Pub. L. 100–180, § 2313, substituted ''construction, improvement,'' for ''construction''.

Subsec. (e). Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (f). Pub. L. 100–26, § 7(f)(2)(D), added subsec. (f).

1984—Subsec. (e). Pub. L. 98–407 inserted ''is more than the amount specified by law as the maximum amount for a minor military construction project and''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2861 of this title.

§ 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facility under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under this section and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102–190, div. B, title XXVIII, § 2870(7), Dec. 5, 1991, 105 Stat. 1563.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190 struck out ''(1)'' after ''carried out only'' and '', or (2) after each such committee has approved the project, if the committees approve the project before the end of that period'' before period at end.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 2807 of this title.

§ 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).

(b)(1) In the case of a contract referred to in subsection (a)—

(A) if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and

(B) if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The initial threshold amount under paragraph (1) is $85,000. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 98–407, title VIII, § 808(a), Aug. 28, 1984, 98 Stat. 1521.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act is classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

The Small Business Act, referred to in subsec. (b)(1)(B), is Pub. L. 85–536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

1984—Pub. L. 98–407 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 808(b) of Pub. L. 98–407 provided that: ''Subsection (b) of section 2855 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded after September 30, 1984, except that the authority of the Secretary of Defense under paragraph (2) of that subsection shall apply only with respect to contracts awarded after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2856. Limitations on barracks space by pay grade

The Secretary of Defense shall prescribe regulations establishing the maximum allowable net square feet per occupant for new permanent barracks construction. Such regulations shall be uniform for the armed forces under the jurisdiction of the Secretary of a military department.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 101–510, div. A, title XIII, §1301(19), Nov. 5, 1990, 104 Stat. 1668.)

AMENDMENTS

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows: ''Before taking effect, any regulations under this section, and any modifications to such regulations, shall be submitted to the appropriate committees of Congress. Such regulations (including any modifications to such regulations) may not then take effect until 21 days after being received by such committees.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§2857. Use of renewable forms of energy in new facilities

(a) The Secretary of Defense shall encourage the use of energy systems using solar energy or other renewable forms of energy as a source of energy for military construction projects (including military family housing projects) where use of such form of energy would be practical and economically feasible.

(b)(1) The Secretary concerned shall require that the design of all new facilities (including family housing) shall include consideration of energy systems using solar energy or other renewable forms of energy in those cases in which use of such forms of energy has the potential for reduced energy costs.

(2) The Secretary concerned shall require that contracts for construction resulting from such design include a requirement that energy systems using solar energy or other renewable forms of energy be installed if such systems can be shown to be cost effective.

(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with such a system, and (B) the original investment cost of the energy system for the facility without such a system can be recovered over the expected life of the facility.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a facility shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(d) In order to equip a military construction project (including a military family housing project) with heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy system using solar energy or other renewable forms of energy, the Secretary concerned may authorize an increase in any otherwise applicable limitation with respect to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 97–321, title VIII, §801(b)(1), (2), Oct. 15, 1982, 96 Stat. 1571; Pub. L. 98–525, title XIV, §1405(45)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–218, §8(b), Dec. 11, 1989, 103 Stat. 1868; Pub. L. 101–510, div. B, title XXVIII, §2852(b), Nov. 5, 1990, 104 Stat. 1804; Pub. L. 102–25, title VII, §701(g)(2), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (c)(2), (3). Pub. L. 101–510 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a facility shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system with and without an energy system using solar energy or other renewable forms of energy over the expected life of the facility or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1989—Subsec. (b)(1). Pub. L. 101–218 substituted ''reduced energy costs'' for ''significant savings of fossil-fuel-derived energy''.

1984—Subsec. (b)(1). Pub. L. 98–525 substituted ''use of such forms of energy has the potential for'' for ''use of solar energy has the potential for''.

1982—Pub. L. 97–321, §801(b)(2), substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in section catchline.

Subsec. (a). Pub. L. 97–321, §801(b)(1)(A), substituted ''energy systems using solar energy or other renewable forms of energy'' and ''such form of energy would'' for ''solar energy systems'' and ''solar energy would'', respectively.

Subsec. (b)(1). Pub. L. 97–321, §801(b)(1)(B), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems'' and directed that ''such form of energy has'' be substituted for ''a solar energy has'', but ''a solar energy has'' did not appear in par. (1). See 1984 Amendment note above.

Subsec. (b)(2). Pub. L. 97–321, §801(b)(1)(B)(i), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems''.

Subsec. (c). Pub. L. 97–321, §801(b)(1)(C)–(E), substituted: in par. (1) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system'' before ''for a facility'' and in items (A) and (B) ''such a system'' for ''a solar energy system''; in par. (2)(A) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system''; and in par. (3) ''energy system using solar energy or other renewable forms of energy'' for ''solar energy system'', respectively.

Subsec. (d). Pub. L. 97–321, §801(b)(1)(F), substituted ''heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy energy system using solar energy or other renewable forms of energy'' for ''solar heating equipment, solar cooling equipment, or both solar heating and solar

cooling equipment, or with a passive solar energy system''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1405(45)(B) of Pub. L. 98–525 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if it had been included in the amendments made by section 801 of Public Law 97–321.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2394a of this title.

§ 2858. Limitation on the use of funds for expediting a construction project

Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary concerned (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2861 of this title.

§ 2859. Transmission of annual military construction authorization request

The Secretary of Defense shall transmit to Congress the annual request for military construction authorization for a fiscal year during the first 10 days after the President transmits to Congress the Budget for that fiscal year pursuant to section 1105 of title 31.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 97–295, § 1(36), Oct. 12, 1982, 96 Stat. 1296.)

HISTORICAL AND REVISION NOTES

In 10:2859, the title 31 citation is substituted on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

1982—Pub. L. 97–295 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2860. Availability of appropriations

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99–167, title VIII, § 812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99–173, § 121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99–661, div. A, title XIII, § 1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

AMENDMENTS

1986—Pub. L. 99–661 substituted ''to the Secretary of Defense'' for ''defense agency'', inserted ''for obligation'' after ''remains available'', and struck out ''the'' before ''appropriation Acts''.

1985—Pub. L. 99–173 substituted ''Availability of appropriations'' for ''Availability of appropriations for five years'' as section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.''

Pub. L. 99–167 struck out subsection designation ''(a)'' and ''and except as otherwise provided under subsection (b)'' after ''provisions of appropriation Acts'', and struck out subsec. (b) which provided: ''Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor.''

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 121(c) of Pub. L. 99–173 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99–103 [Sept. 30, 1985].''

Section 812(b) of Pub. L. 99–167 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

AVAILABILITY OF APPROPRIATIONS FOR FIVE YEARS

Pub. L. 103–307, § 118, Aug. 23, 1994, 108 Stat. 1664, provided that: ''Notwithstanding any other provision of law, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any

amount by which the cost of such project is increased pursuant to law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–110, § 118, Oct. 21, 1993, 107 Stat. 1043.
Pub. L. 102–380, § 119, Oct. 5, 1992, 106 Stat. 1371.
Pub. L. 102–136, § 119, Oct. 25, 1991, 105 Stat. 643.
Pub. L. 101–519, § 119, Nov. 5, 1990, 104 Stat. 2246.
Pub. L. 101–148, § 121, Nov. 10, 1989, 103 Stat. 925.
Pub. L. 100–447, § 124, Sept. 27, 1988, 102 Stat. 1835.

TRANSFER OF FUNDS FOR FOREIGN CURRENCY FLUCTUATIONS

Pub. L. 103–307, § 119, Aug. 23, 1994, 108 Stat. 1665, provided that: ''During the five-year period after appropriations available to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations will not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations may be transferred into the appropriation 'Foreign Currency Fluctuations, Construction, Defense' to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–110, § 120, Oct. 21, 1993, 107 Stat. 1043.
Pub. L. 102–380, § 121, Oct. 5, 1992, 106 Stat. 1372.
Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 99–500, § 101(k) [title I, § 121], Oct. 18, 1986, 100 Stat. 1783–287, 1783–293, and Pub. L. 99–591, § 101(k) [title I, § 121], Oct. 30, 1986, 100 Stat. 3341–287, 3341–293, as amended by Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643, provided that: ''For Transfer by the Secretary of Defense to and from appropriations and funds not merged pursuant to subsection 1552(a)(1) of title 31 of the United States Code and available for obligation or expenditure during fiscal year 1987 or thereafter, for military construction or expenses of family housing for the military departments and Defense agencies, in order to maintain the budgeted level of operations for such appropriations and thereby eliminate substantial gains and losses to such appropriations caused by fluctuations in foreign currency exchange rates that vary substantially from those used in preparing budget submissions, an appropriation, to remain available until expended: *Provided*, That funds transferred from this appropriation shall be merged with and be available for the same purpose, and for the same time period, as the appropriation or fund to which transferred, and funds transferred to this appropriation shall be merged with, and available for the purpose of this appropriation until expended: *Provided further*, That transfers may be made from time to time from this appropriation to the extent the Secretary of Defense determines it may be necessary to do so to reflect downward fluctuations in the currency exchange rates from those used in preparing the budget submissions for such appropriations, but transfers shall be made from such appropriations to this appropriation to reflect upward fluctuations in currency exchange rates to prevent substantial net gains in such appropriations: *Provided further*, That authorizations or limitations now or hereafter contained within appropriations or other provisions of law limiting the amounts that may be obligated or expended for military construction and family housing expenses are hereby increased to the extent necessary to reflect downward fluctuations in foreign currency exchange rates from those used in preparing the applicable budget submission: *Provided further*, That for the purposes of the appropriation 'Foreign Currency Fluctuations, Construction, Defense' the foreign currency rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on the Acts making appropriations for military construction for the Department of Defense: *Provided further*, That the Secretary of Defense shall provide an annual report to the Congress on all transfers made to or made from this appropriation: *Provided further*, That contracts or other obligations entered into payable in foreign currencies may be recorded as obligations based on the currency exchange rates used in preparing budget submissions and adjustments to reflect fluctuations in such rates may be recorded as disbursements are made: *Provided further*, That, at the discretion of the Secretary of Defense, any savings generated in the military construction and family housing programs may be transferred to this appropriation.''

§ 2861. Annual report to Congress

(a) The Secretary of Defense shall submit a report to the appropriate committees of Congress each year with respect to military construction activities and military family housing activities. Each such report shall be submitted at the same time that the annual request for military construction authorization is submitted for that year. Except where otherwise provided in this section, information required by this section to be provided in the report shall be provided for the two most recent fiscal years and for the fiscal year for which the budget request is made.

(b) Each report under subsection (a) shall include the following:

(1) A statement of the construction status and a fiscal summary of the military construction projects undertaken under, and the amounts authorized and appropriated for, contingency construction under section 2804 of this title.

(2) Information to enable the committees to evaluate the relationships between budget requests for appropriations for unspecified minor construction projects under section 2805 of this title and obligations of appropriated funds for projects under such section. Such information shall include comparisons of budget requests and obligations using military construction appropriations and using operations and maintenance appropriations, maintenance and repair backlog, and obligations for maintenance and repair.

(3) Information to enable the committees to monitor trends in construction started using funds contributed by the United States under section 2806 of this title to the North Atlantic Treaty Organization Infrastructure program and the status of recoupments under that program.

(4) Information to enable the committees to evaluate trends in contracting for architect and engineering services and construction design, and trends in accomplishing design of construction projects by Government employees, under the authority of section 2807 of this title.

(5) Information to enable the committees to evaluate trends in supervision, inspection, and overhead costs for the dollar amount of military construction accomplished during a fiscal year by a military construction department or agency under the authority of section 2851 of this title.

(6) A summary of military construction projects (other than a military construction project for an amount less than the amount

specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project) placed under contract during the preceding fiscal year with respect to which a cost variation or scope reduction report was supplied to the appropriate committees of Congress under section 2853 of this title. There shall also be included an analysis to indicate whether the cost variation was the result of a lack of competition, quality of plans and specifications, or quality of budget estimates, or of other factors.

(7) Information to enable the committees to evaluate the use of the authority provided under section 2858 of this title to expedite a military construction project when such expediting is required to protect the national interest.

(8) Information in sufficient detail to enable the committees to monitor trends in design, construction, performance goals, and progress.

(9) With respect to each contract awarded during the preceding fiscal year on other than a competitive basis to the lowest responsible bidder, the name of the contractor, the original amount of the contract, and the reason for the award of the contract on other than a competitive basis.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 100–26, § 7(f)(1), (j)(9), Apr. 21, 1987, 101 Stat. 281, 283.)

AMENDMENTS

1987—Subsec. (b)(6). Pub. L. 100–26, § 7(f)(1), substituted ''specified by section 2805(a)(2) of this title'' for ''specified by law''.

Subsec. (b)(7). Pub. L. 100–26, § 7(j)(9), inserted ''of this title'' after ''section 2858''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2862. Turn-key selection procedures

(a) AUTHORITY TO USE.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

(b) DEFINITION.—In this section, the term ''one-step turn-key selection procedures'' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(Added Pub. L. 99–167, title VIII, § 807(a), Dec. 3, 1985, 99 Stat. 988; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2301, Dec. 4, 1987, 101 Stat. 1214; Pub. L. 101–189, div. B, title XXVIII, § 2806, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, § 2802, Dec. 5, 1991, 105 Stat. 1537.)

AMENDMENTS

1991—Pub. L. 102–190 redesignated par. (1) of subsec. (a) as entire subsec. (a) and inserted heading, redesignated par. (2) of subsec. (a) as (b), inserted heading, and struck out former subsecs. (b) and (c) which read as follows:

''(b) The Secretary of Defense, with respect to any Defense Agency, or the Secretary of a military department may not, during any fiscal year, enter into more than three contracts for military construction projects using procedures authorized by this section.

''(c) The authority under this section shall expire on October 1, 1991.''

1989—Subsec. (a)(1). Pub. L. 101–189, § 2806(1), struck out at end ''Such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.''

Subsec. (c). Pub. L. 101–189, § 2806(2), substituted ''1991'' for ''1990''.

1987—Subsec. (a)(1). Pub. L. 100–180, § 2301(1), substituted ''The Secretary concerned'' for ''The Secretaries of the military departments, with the approval of the Secretary of Defense,'' and inserted provision at end that such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.

Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b). Pub. L. 100–180, § 2301(2), inserted ''Secretary of Defense, with respect to any Defense Agency, or the'' after ''The''.

EFFECTIVE DATE

Section 807(c) of Pub. L. 99–167 provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 1986.''

§ 2863. Payment of contractor claims

Notwithstanding any other provision of law, the Secretary concerned may pay meritorious contractor claims that arise under military construction contracts or family housing contracts. The Secretary of Defense, with respect to a Defense Agency, or the Secretary of a military department may use for such purpose any unobligated funds appropriated to such department and available for military construction or family housing construction, as the case may be.

(Added Pub. L. 100–180, div. B, subdiv. 3, title I, § 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

§ 2864. Military construction contracts on Guam

(a) IN GENERAL.—Except as provided in subsection (b), funds appropriated for military construction may not be obligated or expended with respect to any contract for a military construction project on Guam if any work is carried out on such project by any person who is a nonimmigrant alien described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

(b) EXCEPTION.—In any case in which there is no acceptable bid made in response to a solicitation for bids on a contract for a military construction project on Guam and the Secretary concerned makes a determination that the prohibition contained in subsection (a) is a significant deterrent to obtaining bids on such contract, the Secretary concerned may make another solicitation for bids on such contract and the prohibition contained in subsection (a) shall not apply to such contract after the 21-day period beginning on the date on which the Secretary concerned transmits to the Committees on Armed Services of the Senate and the House of Representatives a written notification of that determination.

(Added Pub. L. 101–189, div. B, title XXVIII, §2807(a), Nov. 29, 1989, 103 Stat. 1648.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section 2807(c) of Pub. L. 101–189 provided that: ''The amendments made by this section [enacting this section] shall apply to contracts entered into, modified, or extended on or after the date of the enactment of this Act [Nov. 29, 1989].''

§2865. Energy savings at military installations

(a) ENERGY PERFORMANCE GOAL AND PLAN.—(1) The Secretary of Defense shall designate an energy performance goal for the Department of Defense for the years 1991 through 2000.

(2) To achieve the goal designated under paragraph (1), the Secretary shall develop a comprehensive plan to identify and accomplish energy conservation measures to achieve maximum cost-effective energy savings.

(3) For the purpose of implementing any energy performance plan, the Secretary shall provide that the selection of energy conservation measures, including energy efficient maintenance, under such plan shall be limited to those with a positive net present value over a period of 10 years or less.

(4) In paragraph (3), the term ''energy efficient maintenance'' includes—

(A) the repair by replacement of equipment or systems, such as lighting, heating, or cooling equipment or systems or industrial processes, with technology that—

(i) will achieve the most cost-effective energy savings over the life-cycle of the equipment or system being repaired; and

(ii) will meet the same end needs as the equipment or system being repaired; and

(B) improvements in an operation or maintenance process, such as improved training or improved controls, that result in reduced costs through energy savings.

(b) USE OF ENERGY COST SAVINGS.—(1) Two-thirds of the portion of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts and financial incentives described in subsection (d)(2), shall remain available for obligation under paragraph (2) through the end of the fiscal year following the fiscal year for which the funds were appropriated, without additional authorization or appropriation.

(2) The Secretary shall provide that the amount that remains available for obligation under paragraph (1) and section 2866(b) of this title, and the funds made available under section 2483(b)(2) of this title, shall be used as follows:

(A) One-half of the amount shall be used for the implementation of additional energy conservation measures and for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the savings referred to in paragraph (1) or in section 2866(b) of this title.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or

(iii) any morale, welfare, or recreation facility or service.

(c) SHARED ENERGY SAVINGS CONTRACTS.—(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department as well as the private sector.

(2)(A) In carrying out paragraph (1), the Secretary of Defense may—

(i) request statements of qualifications (as prescribed by the Secretary of Defense), including financial and performance information, from firms engaged in providing shared energy savings contracting;

(ii) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(iii) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(iv) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(B) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(d) ENERGY SAVING ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation or by any utility for water conservation activities.

(2) The Secretary of Defense may authorize any military installation to accept any financial

incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(4)(A) If an agreement under paragraph (3) provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repayed by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(B) Subject to the availability of appropriations, repayment of costs advanced under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(e) ENERGY CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify in writing the Committees on Armed Services and Appropriations of the Senate and House of Representatives of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(f) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Defense shall transmit an annual report to the Congress containing a description of the actions taken to carry out this section, and the savings realized from such actions, during the fiscal year ending in the year in which the report is made.

(Added Pub. L. 101–510, div. B, title XXVIII, § 2851(a), Nov. 5, 1990, 104 Stat. 1803; amended Pub. L. 102–484, div. B, title XXVIII, § 2801, Oct. 23, 1992, 106 Stat. 2604; Pub. L. 103–160, div. B, title XXVIII, § 2804, Nov. 30, 1993, 107 Stat. 1885; Pub. L. 103–337, div. A, title X, § 1070(a)(14), Oct. 5, 1994, 108 Stat. 2856.)

AMENDMENTS

1994—Subsec. (a)(4)(B). Pub. L. 103–337 inserted period at end.

1993—Subsec. (a)(3). Pub. L. 103–160, § 2804(a)(1), inserted ", including energy efficient maintenance," after "conservation measures".

Subsec. (a)(4). Pub. L. 103–160, § 2804(a)(2), added par. (4).

Subsec. (b)(1). Pub. L. 103–160, § 2804(b)(1), substituted "Two-thirds" for "The Secretary shall provide that two-thirds" and struck out "for any fiscal year beginning after fiscal year 1990" after "described in subsection (d)(2),".

Subsec. (b)(2). Pub. L. 103–160, § 2804(b)(2), added introductory provisions and subpar. (A) and struck out former introductory provisions and subpar. (A) which read as follows: "The amount that remains available for obligation under paragraph (1) shall be utilized as follows:

"(A) One-half of the amount shall be used for the implementation of additional energy conservation measures at such buildings, facilities, or installations of the Department of Defense as the head of the department, agency, or instrumentality that realized the savings may designate in accordance with regulations prescribed by the Secretary of Defense."

Subsec. (d)(1). Pub. L. 103–160, § 2804(c), inserted before period at end "or by any utility for water conservation activities".

1992—Subsec. (a). Pub. L. 102–484, § 2801(e)(1), inserted heading.

Subsec. (b). Pub. L. 102–484, § 2801(e)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102–484, § 2801(c), substituted "subsection (d)(2)" for "paragraph (3)(B)".

Subsec. (b)(3). Pub. L. 102–484, § 2801(a)(1), struck out par. (3) which read as follows: "The Secretary—

"(A) shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation; and

"(B) may authorize any military installation to accept any financial incentive, generally available from any such utility, to adopt technologies and practices that the Secretary determines are cost-effective for the Federal Government."

Subsec. (c). Pub. L. 102–484, § 2801(e)(3), inserted heading.

Subsecs. (d), (e). Pub. L. 102–484, § 2801(a)(3), (b), added subsecs. (d) and (e). Former subsec. (d) redesignated (f).

Subsec. (f). Pub. L. 102–484, § 2801(a)(2), (d), (e)(4), redesignated subsec. (d) as (f), inserted heading, and substituted "not later than December 31 of each year" for "Beginning with fiscal year 1991 and by no later than December 31, 1991, and of each year thereafter".

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2483, 2866 of this title.

§ 2866. Water conservation at military installations

(a) WATER CONSERVATION ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the

amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that—

(A) relate to the management of water demand or to water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repayed by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) USE OF WATER COST SAVINGS.—Water cost savings realized under this section shall be used as provided in section 2865(b)(2) of this title.

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the Committees on Armed Services and Appropriations of the Senate and House of Representatives of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2803(a), Nov. 30, 1993, 107 Stat. 1884.)

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2865 of this title.

CHAPTER 171—SECURITY AND CONTROL OF SUPPLIES

Sec.
2891. Security and control of supplies: annual report.
2892. Miscellaneous procedures.

§ 2891. Security and control of supplies: annual report

(a) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report for each of fiscal years 1992, 1993, and 1994 on security and control of Department of Defense supplies. Each such report shall be submitted not later than four months after the end of the fiscal year for which the report is submitted.

(b) Each report shall include the following:

(1) A summary of each of the physical inventory program plans of the Department of Defense, the Defense Logistics Agency, and the military departments for the fiscal year in which the report is submitted.

(2) A discussion of the deficiencies, if any, in the security and control of Department of Defense supplies in the fiscal year preceding the year in which the report is submitted and a discussion of the extent to which such deficiencies have been corrected.

(3) A discussion of—

(A) research and development projects carried out by the Department of Defense in such preceding fiscal year for the improvement of the inventory and recordkeeping capabilities of the Department;

(B) any proposals for expeditious application of any new technology resulting from such projects; and

(C) the budget needs for research and development for such purpose in the fiscal year in which the report is submitted and any subsequent fiscal year for which the budget needs have been determined.

(4) The budget authority made available to the Department of Defense for inventory control functions in the fiscal year in which the report is submitted and in each of the five fiscal years preceding such fiscal year.

(5) The budget authority proposed for such purpose in the budget submitted to Congress under section 1105 of title 31 for the fiscal year following the fiscal year in which the report is submitted.

(6) The budget authority needed for such purpose in each of the five fiscal years following the fiscal year for which such budget is submitted.

(7) An evaluation of the effectiveness of supply inventory control in the fiscal year preceding the fiscal year in which the report is submitted, the criteria used by the Secretary to make such evaluation, and the information considered by the Department in making the evaluation, including the value of supplies lost or stolen or for which accountability has otherwise been lost.

(8) The aggregate statistics for all incidents of theft, fraud, or breach of security involving

Department of Defense supplies that were investigated by military or civilian law enforcement agencies during the fiscal year preceding the fiscal year in which the report is submitted (including incidents involving munitions), a summary description of all such incidents (including the circumstances under which the incidents occurred), and the lessons learned by the Department of Defense from such incidents.

(9) A summary description of the cases determined by the Secretary of Defense to be cases of major thefts of Department of Defense supplies during the fiscal year preceding the fiscal year in which the report is submitted, including any case involving a loss in an amount greater than $1,000,000 or a loss of sensitive or classified items.

(10) The value, and an analysis, of in-transit losses that occurred during the fiscal year preceding the fiscal year in which the report is submitted.

(Added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1959; amended Pub. L. 102–484, div. A, title III, § 372, Oct. 23, 1992, 106 Stat. 2384.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484, § 372(a), substituted ''for each of fiscal years 1992, 1993, and 1994'' for ''for each of fiscal years 1989, 1990, and 1991'' in introductory provisions.

Subsec. (b)(9), (10). Pub. L. 102–484, § 372(b), added pars. (9) and (10).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

DEFENSE SUPPLY MANAGEMENT STUDIES AND MODERNIZATION PLAN

Section 341 of Pub. L. 100–456 directed Secretary of Defense to carry out a defense inventory security and control enhancement study and, not later than 18 months after Sept. 29, 1988, submit a report, in both classified and unclassified forms if necessary, to Committees on Armed Services of Senate and House, and transmit a copy to Comptroller General for review and submission to such Committees, within 90 days, of findings and recommendations; directed Secretary to conduct a cost-benefit analysis of sales of surplus munitions and, not later than 180 days after Sept. 29, 1988, submit a report to Committees on such practices; directed Secretary to develop improved methods of identification and accounting for ammunition, etc., susceptible to pilferage and, not later than one year after Sept. 29, 1988, submit a report to Committees on such methods; and directed Secretary to prepare a supply system modernization plan and transmit a copy of such plan to Committees not later than one year after Sept. 29, 1988.

REPORT EXCEPTION

Section 342(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense may omit in the report for any fiscal year under section 2891 of title 10, United States Code, as added by subsection (a), the information relating to any of fiscal years 1983 through 1988, described in subsection (b)(4) of such section, for which the Secretary determines that there are inadequate records.''

INVENTORY INVESTIGATIONS

Section 343 of Pub. L. 100–456 provided that:

''(a) UNDERCOVER INVESTIGATIONS.—(1) Congress finds that the use of undercover investigative techniques by the Department of Defense enhances the ability of the Department of Defense to detect and investigate theft of Government property (including munitions) from the Department of Defense supply system.

''(2) The Secretary of Defense is urged to continue to conduct undercover investigations to detect and investigate thefts referred to in paragraph (1).

''(b) INVENTORY SECURITY INCIDENT REPOSITORY.—The Secretary of Defense shall establish and maintain a centralized computer system for recording and organizing information on theft, fraud, and breach of security and incidents involving the loss of Department of Defense supplies (including munitions).''

§ 2892. Miscellaneous procedures

(a) The Secretary of Defense shall require an investigation of each discrepancy in an accounting for supplies of the Department of Defense involving an amount exceeding the amount determined under procedures prescribed by the Secretary. The Secretary shall prescribe procedures that provide for random investigation of physical inventory discrepancies, regardless of the value of the property involved in the discrepancy.

(b) The Secretary shall, to the extent feasible, require that the job function of supply ordering and the job function of supply receiving be performed by different offices and individuals.

(c) The Secretary shall ensure—

(1) that the employees of the Department of Defense and members of the armed forces assigned to manage Department of Defense supplies are skilled in the management of such supplies; and

(2) that no employee of the Department of Defense and no member of the armed forces is assigned to perform such function for disciplinary reasons.

(Added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1960.)

CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

Sec.
2901. Strategic Environmental Research and Development Program.
2902. Strategic Environmental Research and Development Program Council.
2903. Executive Director.
2904. Strategic Environmental Research and Development Program Scientific Advisory Board.

§ 2901. Strategic Environmental Research and Development Program

(a) The Secretary of Defense shall establish a program to be known as the ''Strategic Environmental Research and Development Program''.

(b) The purposes of the program are as follows:

(1) To address environmental matters of concern to the Department of Defense and the Department of Energy through support for basic and applied research and development of technologies that can enhance the capabilities of the departments to meet their environmental obligations.

(2) To identify research, technologies, and other information developed by the Department of Defense and the Department of Energy for national defense purposes that would

be useful to governmental and private organizations involved in the development of energy technologies and of technologies to address environmental restoration, waste minimization, hazardous waste substitution, and other environmental concerns, and to share such research, technologies, and other information with such governmental and private organizations.

(3) To furnish other governmental organizations and private organizations with data, enhanced data collection capabilities, and enhanced analytical capabilities for use by such organizations in the conduct of environmental research, including research concerning global environmental change.

(4) To identify technologies developed by the private sector that are useful for Department of Defense and Department of Energy defense activities concerning environmental restoration, hazardous and solid waste minimization and prevention, hazardous material substitution, and provide for the use of such technologies in the conduct of such activities.

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1751.)

§ 2902. Strategic Environmental Research and Development Program Council

(a) There is a Strategic Environmental Research and Development Program Council (hereinafter in this chapter referred to as the ''Council'').

(b) The Council is composed of thirteen members as follows:

(1) The Director of Defense Research and Engineering.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The Assistant Secretary of the Air Force responsible for matters relating to space.

(4) The Deputy Under Secretary of Defense responsible for environmental security.

(5) The Assistant Secretary of Energy for Defense programs.

(6) The Assistant Secretary of Energy responsible for environmental restoration and waste management.

(7) The Director of the Department of Energy Office of Energy Research.

(8) The Administrator of the Environmental Protection Agency.

(9) One representative from each of the Army, Navy, Air Force, and Coast Guard, who shall be nonvoting members.

(10) The Executive Director of the Council (appointed pursuant to section 2903 of this title), who shall be a nonvoting member.

(c) The Secretary of Defense shall designate a member of the Council as chairman for each odd numbered fiscal year. The Secretary of Energy shall designate a member of the Council as chairman for each even-numbered fiscal year.

(d) The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the Strategic Environmental Research and Development Program.

(2) To enter into contracts, grants, and other financial arrangements, in accordance with other applicable law, to carry out the purposes of the Strategic Environmental Research and Development Program.

(3) To prepare an annual five-year strategic environmental research and development plan that shall cover the fiscal year in which the plan is prepared and the four fiscal years following such fiscal year.

(4) To promote the maximum exchange of information, and to minimize duplication, regarding environmentally related research, development, and demonstration activities through close coordination with the military departments and Defense Agencies, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, other departments and agencies of the Federal Government or any State and local governments, including the Federal Coordinating Council on Science, Engineering, and Technology, and other organizations engaged in such activities.

(5) To ensure that research and development activities under the Strategic Environmental Research and Development Program do not duplicate other ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, or any other department or agency of the Federal Government.

(6) To ensure that the research and development programs identified for support pursuant to policies and procedures prescribed by the council utilize, to the maximum extent possible, the talents, skills, and abilities residing at the Federal laboratories, including the Department of Energy multiprogram and defense laboratories, the Department of Defense laboratories, and Federal contract research centers. To utilize the research capabilities of institutions of higher education and private industry to the extent practicable.

(e) In carrying out subsection (d)(1), the Council shall prescribe policies and procedures that—

(1) provide for appropriate access by Federal Government personnel, State and local government personnel, college and university personnel, industry personnel, and the general public to data under the control of, or otherwise available to, the Department of Defense that is relevant to environmental matters by—

(A) identifying the sources of such data;

(B) publicizing the availability and sources of such data by appropriately-targeted dissemination of information to such personnel and the general public, and by other means; and

(C) providing for review of classified data relevant to environmental matters with a view to declassifying or preparing unclassified summaries of such data;

(2) provide governmental and nongovernmental entities with analytic assistance, consistent with national defense missions, including access to military platforms for sensor de-

ployment and access to computer capabilities, in order to facilitate environmental research;

(3) provide for the identification of energy technologies developed for national defense purposes (including electricity generation systems, energy storage systems, alternative fuels, biomass energy technology, and applied materials technology) that might have environmentally sound, energy efficient applications for other programs of the Department of Defense and the Department of Energy national security programs, particularly technologies that have the potential for industrial, commercial, and other governmental applications, and to support programs of research in and development of such applications;

(4) provide for the identification and support of programs of basic and applied research, development, and demonstration in technologies useful—

(A) to facilitate environmental compliance, remediation, and restoration activities of the Department of Defense and at Department of Energy defense facilities;

(B) to minimize waste generation, including reduction at the source, by such departments; or

(C) to substitute use of nonhazardous, nontoxic, nonpolluting, and other environmentally sound materials and substances for use of hazardous, toxic, and polluting materials and substances by such departments;

(5) provide for the identification and support of research, development, and application of other technologies developed for national defense purposes which not only are directly useful for programs, projects, and activities of such departments, but also have useful applications for solutions to such national and international environmental problems as climate change and ozone depletion;

(6) provide for the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, in cooperation with other Federal and State agencies, as appropriate, to conduct joint research, development, and demonstration projects relating to innovative technologies, management practices, and other approaches for purposes of—

(A) preventing pollution from all sources;

(B) minimizing hazardous and solid waste, including recycling; and

(C) treating hazardous and solid waste, including the use of thermal, chemical, and biological treatment technologies;

(7) encourage transfer of technologies referred to in clauses (2) through (6) to the private sector under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) and other applicable laws;

(8) provide for the identification of, and planning for the demonstration and use of, existing environmentally sound, energy-efficient technologies developed by the private sector that could be used directly by the Department of Defense;

(9) provide for the identification of military specifications that prevent or limit the use of environmentally beneficial technologies, materials, and substances in the performance of Department of Defense contracts and recommend changes to such specifications; and

(10) to ensure that the research and development programs identified for support pursuant to the policies and procedures prescribed by the Council are closely coordinated with, and do not duplicate, ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, or other Federal agencies.

(f)(1) To assist the Council in preparing the five-year strategic environmental research and development plan under subsection (d)(3), the Secretary of Defense and the Secretary of Energy may each submit to the Council a proposal for conducting environmental research under this chapter. The Secretary of each department shall ensure that the environmental research proposal of the department includes—

(A) short- and long-term, cooperative, basic, and applied research systems engineering and development programs in environmental research;

(B) short- and long-term, basic research in environmental restoration at the respective laboratories of each department; and

(C) participation by industry and institutions of higher education.

(2) The Secretary of each department shall ensure that, in the development of its environmental research proposal, consideration is given to—

(A) the need for increased research in basic science, including basic materials, physics, molecular structures, chemistry, and biology related to environmental research at that department's defense operations, production, research, and maintenance facilities; and

(B) ways to identify and conduct research and development on technologies for environmental restoration, remediation and waste cleanup activities, waste minimization, and hazardous and toxic materials substitution potential in defense production and maintenance activities.

(3) The Secretary of each department shall transmit the proposal to the Council not later than July 1 of each year.

(g) The Council shall be subject to the authority, direction, and control of the Secretary of Defense in prescribing policies and procedures under subsection (d)(1).

(h)(1) Not later than February 1 of each year, the Council shall submit to the Secretary of Defense an annual report on the annual five-year strategic environmental research and development plan prepared pursuant to subsection (d)(3).

(2) The report shall contain the following:

(A) A description of the actions to be taken during the five-year period covered by the plan in order to prevent duplication of research and development activities referred to in the policies and procedures prescribed pursuant to subsection (d)(1).

(B) A description of the involvement with Federal interagency coordinating entities

such as the Federal Coordinating Council on Science, Engineering, and Technology.

(C) A description of each project selected or recommended by the Council for support and funding, including the duration of, and the total estimated or (if known) actual cost of—

(i) each such project supported during the fiscal year in which the plan is submitted and the preceding fiscal year; and

(ii) each such project proposed for funding during the fiscal year in which the annual report is submitted and the following four fiscal years.

(D) The amounts requested, in the budget submitted to Congress pursuant to section 1105(a) of title 31 for the fiscal year following the fiscal year in which the annual report is submitted, for the programs, projects, and activities of the Strategic Environmental Research and Development Program and the estimated expenditures under such programs, projects, and activities during such following fiscal year.

(E) The amount requested in such budget for each Federal laboratory, including each Department of Defense and Department of Energy laboratory.

(F) The amount made available, for the fiscal year in which the annual report is submitted, to each Federal laboratory, including each Department of Defense and Department of Energy laboratory.

(G) A description of any changes in military specifications recommended by the Council, actions to be taken to effectuate any such recommended changes on an expedited basis, and the projected date for each such change.

(H) A description of all contracts, agreements, or other documents for cooperative research and development activities entered into pursuant to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) during the fiscal year preceding the fiscal year in which the annual report is submitted.

(I) Plans for transferring technology and information to other governmental agencies and to nongovernmental organizations involved in environmental research and related matters.

(J) A description of plans to increase access to data described in subsection (e)(1).

(K) Such additional recommendations or proposals, including proposals for legislation, relating to the Strategic Environmental Research and Development Program as the Council considers appropriate.

(3) The Council shall make a draft of the five-year strategic environmental research and development plan covered by each report available for public comment for a period of at least 30 days.

(4) Not later than March 15 of each year the Secretary of Defense and the Secretary of Energy shall transmit the annual report to the Congress. The Secretary of Defense and the Secretary of Energy may submit such comments on the annual report as each Secretary considers appropriate.

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1751; amended Pub. L. 102–190, div. A, title II, § 257(a), title X, § 1061(a)(19), Dec. 5, 1991, 105 Stat. 1331, 1473; Pub. L. 102–484, div. A, title X, § 1052(38), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 103–160, div. A, title II, § 265(a), Nov. 30, 1993, 107 Stat. 1611.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsecs. (e)(7) and (h)(2)(H), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§ 3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

AMENDMENTS

1993—Subsec. (b)(1) to (4). Pub. L. 103–160, § 265(a)(1)–(3), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1) which read as follows: ''The Assistant Secretary of Defense responsible for matters relating to production and logistics.''

Subsec. (b)(6). Pub. L. 103–160, § 265(a)(4), added par. (6) and struck out former par. (6) which read as follows: ''The Director of the Department of Energy Office of Environmental Restoration and Waste Management.''

1992—Subsec. (b)(9). Pub. L. 102–484 substituted ''nonvoting'' for ''non-voting''.

1991—Subsec. (b). Pub. L. 102–190, § 257(a)(1), substituted ''thirteen'' for ''nine'' in introductory provisions.

Subsec. (b)(9), (10). Pub. L. 102–190, § 257(a)(2), (3), added par. (9) and redesignated former par. (9) as (10).

Subsec. (f)(2)(A). Pub. L. 102–190, § 1061(a)(19), substituted ''department's'' for ''Department's''.

FIRST ANNUAL REPORT OF STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM COUNCIL

Section 1801(c) of Pub. L. 101–510 provided that:

''(1) The first annual report required by section 2902(h) of title 10, United States Code, as added by subsection (a)(1), shall be submitted to the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency not later than February 1, 1992.

''(2) The Strategic Environmental Research and Development Program Council shall conduct and include as part of the first annual report required pursuant to section 2902(h) of title 10, United States Code, as added by subsection (a)(1), an assessment of the advisability of, and various alternatives to, charging fees for information released, as required pursuant to sections 2901(b)(3), 2902(e)(1) and (2), and 2902(g)(2)(I) of such title (as so added), to private sector entities operating for a profit.

''(3) The Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency shall submit to the Congress, with the annual report referred to in paragraph (1), any recommendations for changes in the structure or personnel of the Council that the Secretaries and the Administrator consider necessary to carry out the environmental activities of the strategic environmental research and development program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2904 of this title.

§ 2903. Executive Director

(a) There shall be an Executive Director of the Council appointed by the Secretary of Defense after consultation with the Secretary of Energy.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Executive Director is responsible for the management of the Strategic Environmental Research and Development Program in accordance with the policies established by the Council.

(c) The Executive Director may enter into contracts or other agreements in accordance with applicable law, except that the Executive Director shall first obtain the approval of the Council for any contract or agreement in an amount equal to or in excess of $500,000 or such lesser amount as the Council may prescribe.

(d)(1) The Executive Director, with the concurrence of the Council, may appoint such professional and clerical staff as may be necessary to carry out the responsibilities and policies of the Council.

(2) The Executive Director, with the concurrence of the Council and without regard to the provisions of chapter 51 of title 5 and subchapter III of chapter 53 of such title, may establish the rates of basic pay for professional, scientific, and technical employees appointed pursuant to paragraph (1). The authority provided in the preceding sentence shall expire on September 30, 1995.

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1755; amended Pub. L. 102–25, title VII, § 701(h)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–160, div. A, title II, § 265(b), Nov. 30, 1993, 107 Stat. 1611.)

AMENDMENTS

1993—Subsec. (d)(2). Pub. L. 103–160 substituted ''September 30, 1995'' for ''November 5, 1992''.

1991—Subsec. (d)(2). Pub. L. 102–25 substituted ''on November 5, 1992'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1991''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2902 of this title.

§ 2904. Strategic Environmental Research and Development Program Scientific Advisory Board

(a) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly appoint a Strategic Environmental Research and Development Program Scientific Advisory Board (hereafter in this section referred to as the ''Advisory Board'') consisting of not less than six and not more than 14 members.

(b)(1) The following persons shall be permanent members of the Advisory Board:

(A) The Science Advisor to the President, or his designee.

(B) The Administrator of the National Oceanic and Atmospheric Administration, or his designee.

(2) Other members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. At least one member of the Advisory Board shall be a representative of environmental public interest groups and one member shall be a representative of the interests of State governments.

(3) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall request—

(A) that the head of the National Academy of Sciences, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

(B) that the Council on Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

(C) that the National Association of Governors nominate for appointment to the Advisory Board at least one person who is representative of the interests of State governments.

(4) Members of the Advisory Board shall be appointed for terms of three years.

(c) A member of the Advisory Board who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee, except for the purposes of chapter 81 of title 5 (relating to compensation for work-related injuries) and chapter 171 of title 28 (relating to tort claims).

(d) The Advisory Board shall prescribe procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, provide for annual election of the Chairman by the members of the Advisory Board, and require at least four meetings of the Advisory Board each year.

(e) The Council shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

(f) The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program.

(g) The Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to section 2902(d)(1) of this title.

(h) Not later than March 15 of each year, the Advisory Board shall submit to the Congress an annual report setting forth its actions during the year preceding the year in which the report is submitted and any recommendations, including recommendations on projects, programs, and information exchange and recommendations for legislation, that the Advisory Board considers appropriate regarding the Strategic Environmental Research and Development Program.

(i) Each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1756; amended

Pub. L. 102–190, div. A, title II, §257(b), Dec. 5, 1991, 105 Stat. 1331.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (i), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190, §257(b)(1), substituted ''14 members'' for ''13 members''.

Subsec. (b)(1). Pub. L. 102–190, §257(b)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Science Advisor to the President, or his designee, shall be a permanent member of the Advisory Board.''

INITIAL APPOINTMENTS OF ADVISORY BOARD MEMBERS

Section 1801(b) of Pub. L. 101–510 directed Secretary of Defense and Secretary of Energy to make the appointments required by 10 U.S.C. 2904(a) not later than 60 days after Nov. 5, 1990, and provided that up to one-half of the members originally appointed to the Strategic Environmental Research and Development Program Scientific Advisory Board could be appointed for terms of not more than six and not less than two years in order to provide for staggered expiration of the terms of members.

FIRST ANNUAL REPORT OF ADVISORY BOARD

Section 1801(d) of Pub. L. 101–510 directed that first annual report of the Strategic Environmental Research and Development Program Scientific Advisory Board be submitted not later than Mar. 15, 1992.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Subtitle B—Army

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[360.	**Repealed.]**	
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AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1672(a), Oct. 5, 1994, 108 Stat. 3015, struck out items for chapters 337 ''Appointments as Reserve Officers'', 361 ''Separation for Various Reasons'', and 363 ''Separation or Transfer to Retired Reserve''. Section 1691(b)(1) of Pub. L. 103–337 provided that the repeal of such chapters is effective Oct. 1, 1996.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(2), Nov. 30, 1993, 107 Stat. 1714, struck out item for chapter 431 ''Industrial Mobilization, Research, and Development''.

1987—Pub. L. 100–26, §7(j)(10)(A), Apr. 21, 1987, 101 Stat. 283, substituted ''3011'' for ''3010'' as section number in item for chapter 303.

1980—Pub. L. 96–513, title V, §§502(1), 512(1), Dec. 12, 1980, 94 Stat. 2909, 2929, substituted ''3010'' for ''3011'' as section number in item for chapter 303, and struck out item for chapter 359 ''Separation from Regular Army for Substandard Performance of Duty'', item for chapter 360 ''Separation from Regular Army for Moral or Professional Dereliction or in Interests of National Security'', and item for chapter 365 ''Retirement for Age''.

1968—Pub. L. 90–377, §3, July 5, 1968, 82 Stat. 288, struck out item for chapter 351 ''United States Disciplinary Barracks''.

Pub. L. 90–235, §8(5), Jan. 2, 1968, 81 Stat. 764, struck out item for chapter 347 ''The Uniform''.

1964—Pub. L. 88–647, title III, §301(11), Oct. 13, 1964, 78 Stat. 1072, struck out item for chapter 405 ''Reserve Officers' Training Corps''.

1960—Pub. L. 86–616, §§2(b), 3(b), July 12, 1960, 74 Stat. 388, 390, substituted ''Substandard Performance of